

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

FIRST CIRCUIT

CIVIL ACTION NO. 05-11053-NMG

JOSEPH E. DOCKHAM  
PETITIONER

V.

MICHAEL CORSINI  
RESPONDENT

PETITIONER'S MEMORANDUM OF LAW IN  
SUPPORT OF MOTION IN RESPONSE TO  
RESPONDENT'S MOTION TO DISMISS

The Petitioner, Joseph E. Dockham, submits this memorandum of law in support of his response to Respondent's motion to dismiss with prejudice his petition for writ of habeas corpus. The Petitioner states that he is not time barred as stated by the Respondent, but that he clearly falls under the "EXCEPTION" as follows: 28 USC § 2244 (d)(2); "Quoting"

The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgement or claim is pending shall not be counted toward any period of limitation under this subsection. (see exhibit A)

In compliance with the above the Petitioner would beseech the Honorable Court to disallow the Respondent's motion to dismiss and allow the petitioner to proceed forward with his petition for habeas corpus,

PRIOR PROCEEDINGS

The Respondent's facts regarding prior proceedings, hold true through and up to the point of the paragraph regarding the statement of several motions filed during the 1990's.

On January 23, 1996 the Petitioner filed a successful motion before the Norfolk Superior Court requesting the

appointment of counsel from the Committee for Public Counsel Services to review his case regarding issues to support a Post-conviction Relief Rule 30 motion. (see exhibit B) The Petitioner states that this properly filed motion meets the standard as set forth in 28 USC § 2244 (d)(2).

The Petitioner, Joseph E. Dockham, states that the documents contained under exhibit C within his current action will serve to show the Honorable Court that the end result of said filed motion was the decision rendered by the Supreme Judicial Court on June 30, 2004.

#### ARGUMENT

As stated in 28 USC § 2244 (d)(2), the "Exception" or "Excludable" periods include "[t]he time during which a properly filed application for State post-conviction or other collateral review is pending... Gaskins V. Duval 183 Fed. 3rd 8 (1999) Applying the tolling provision encourages respect for the principle of comity and compliance with the **requirement** that, ordinarily, a state prisoner **must** first exhaust his state court remedies before seeking Federal Habeas Relief.

The motion (see exhibit B) which was properly filed and accepted by the court in paragraph #2 clearly states, "The Defendant, states that given the opportunity to have C.P.C.S. Post-conviction screening panel review his case he feels that he would have strong issues with which to move forward with a Rule 30 under Post-conviction relief".

In the affidavit in support of said motion to appoint C.P.C.S. screening panel, paragraph #3 clearly states, "That at the time of trial I was effectively precluded from proper trial representation due to lack of skill and training of my then court appointed attorney in regards to the nature of the offense to which I was charged". Paragraph #4 clearly states, "That given the opportunity to have the Post-conviction screening panel review my case that several pertinent issues will be brought forward that will allow for grounds with which to move toward Post-conviction relief under a Rule 30".

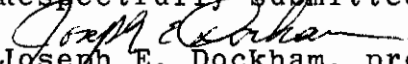
I believe the fact that this motion was allowed and counsel was appointed to represent me on the most recent Rule 30 motion, the end result being the decision and ruling by the Supreme Judicial Court on June 30, 2004 would qualify under the "Exception to the rule" as pertaining to collateral attack. Fields V. Johnson 159 Fed. 3rd 914 (5th Cir. 1998) Strict one-year "reasonableness period" following effective date of AEDPA, during which Federal Habeas petitions and motions to vacate that otherwise would have been time-barred immediately upon effective date of AEDPA could still be filed, is subject to AEDPA's express tolling provisions for time spent PURSUING state Post-conviction or other collateral review.

The original motion filed January 1996 (exhibit B) together with the documents listed as (exhibit C) will serve to show the Honorable Court the process from 1996 through to the decision by the Supreme Judicial Court on June 30, 2004.

These documents will fit the exceptions regarding the attempts by the government (District Attorney's and Probation offices of the Norfolk Superior Court) to impede relief and newly discovered facts that raises doubts about the conviction. Which is believed to fall within the perimeters of 28 USC § 2244 (d)(1)(D). Quoting Lattimore V. DuBoise 311 Fed. 3rd 46 (1st Cir. 2002) **Limitations of Actions:** 104.5 Equitable tolling is reserved for cases in which circumstances beyond the litigants control have prevented him from promptly filing.

#### CONCLUSION


FOR the foregoing reasons, the Honorable Court should disallow the Respondent's Motion to dismiss with prejudice Petitioner's petition for Writ of Habeas Corpus and allow the Petitioner to proceed with said Writ of Habeas Corpus.

Respectfully submitted,  
  
Joseph E. Dockham, pro-se  
Bay State Correctional Center  
P.O. Box 73 28 Clark St.  
Norfolk, MA 02056-0073

Dated this 29<sup>th</sup> day of  
August 2005

#### Certificate of service

I hereby certify that a true copy of the above document was served on Daniel I. Smulow, Assistant Attorney General, Criminal Bureau, One Ashburton Place, Boston, MA 02108, by first class mail, postage prepaid, on 29 August 2005

  
Joseph E. Dockham

# **EXHIBIT A**

LEXISNEXIS

Home Find a Case Site Map Help

Search Terms: 28 U.S.C.2244

FOCUS™

Search Within Results

[Edit Search](#)[Print](#)[Email](#)[Document List](#)[Expanded List](#)[KWIC](#)[Full](#)Document 1 of 3. [next](#)▶[More Like This](#)

UNITED STATES CODE SERVICE  
Copyright © 2005 Matthew Bender & Company, Inc.,  
one of the LEXIS Publishing (TM) companies  
All rights reserved

\*\*\* CURRENT THROUGH P.L. 109-15, APPROVED 6/17/05 \*\*\*

TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE  
PART VI. PARTICULAR PROCEEDINGS  
CHAPTER 153. HABEAS CORPUS

**GO TO CODE ARCHIVE DIRECTORY FOR THIS JURISDICTION**

28 USCS § 2244 (2005)

[Review expert commentary from The National Institute for Trial Advocacy](#)

2244. Finality of determination

) No circuit or district judge shall be required to entertain an application for a writ of habeas corpus to quire into the detention of a person pursuant to a judgment of a court of the United States if it appears at the legality of such detention has been determined by a judge or court of the United States on a prior application for a writ of habeas corpus, except as provided in section 2255 [28 USCS § 2255].

(b) (1) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was presented in a prior application shall be dismissed.

(2) A claim presented in a second or successive habeas corpus application under section 2254 [28 USCS § 2254] that was not presented in a prior application shall be dismissed unless--

(A) the applicant shows that the claim relies on a new rule of constitutional law, made retroactive to cases on collateral review by the Supreme Court, that was previously unavailable; or

(B) (i) the factual predicate for the claim could not have been discovered previously through the exercise of due diligence; and

(ii) the facts underlying the claim, if proven and viewed in light of the evidence as a whole, would be sufficient to establish by clear and convincing evidence that, but for constitutional error, no reasonable factfinder would have found the applicant guilty of the underlying offense.

(3) (A) Before a second or successive application permitted by this section is filed in the district court, the applicant shall move in the appropriate court of appeals for an order authorizing the district court to consider the application.

(B) A motion in the court of appeals for an order authorizing the district court to consider a second or successive application shall be determined by a three-judge panel of the court of appeals.

(C) The court of appeals may authorize the filing of a second or successive application only if it determines that the application makes a prima facie showing that the application satisfies the requirements of this subsection.

(D) The court of appeals shall grant or deny the authorization to file a second or successive application not later than 30 days after the filing of the motion.

(E) The grant or denial of an authorization by a court of appeals to file a second or successive application shall not be appealable and shall not be the subject of a petition for rehearing or for a writ of certiorari.

(4) A district court shall dismiss any claim presented in a second or successive application that the court of appeals has authorized to be filed unless the applicant shows that the claim satisfies the requirements of this section.



(c) In a habeas corpus proceeding brought in behalf of a person in custody pursuant to the judgment of a State court, a prior judgment of the Supreme Court of the United States on an appeal or review by a writ of certiorari at the instance of the prisoner of the decision of such State court, shall be conclusive as to all issues of fact or law with respect to an asserted denial of a Federal right which constitutes ground for discharge in a habeas corpus proceeding, actually adjudicated by the Supreme Court therein, unless the applicant for the writ of habeas corpus shall plead and the court shall find the existence of a material and controlling fact which did not appear in the record of the proceeding in the Supreme Court and the court shall further find that the applicant for the writ of habeas corpus could not have caused such fact to appear in such record by the exercise of reasonable diligence.

(d) (1) A 1-year period of limitation shall apply to an application for a writ of habeas corpus by a person in custody pursuant to the judgment of a State court. The limitation period shall run from the latest of--

(A) the date on which the judgment became final by the conclusion of direct review or the expiration of the time for seeking such review;

(B) the date on which the impediment to filing an application created by State action in violation of the Constitution or laws of the United States is removed, if the applicant was prevented from filing by such State action;

(C) the date on which the constitutional right asserted was initially recognized by the Supreme Court, if the right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or

(D) the date on which the factual predicate of the claim or claims presented could have been discovered through the exercise of due diligence.

(2) The time during which a properly filed application for State post-conviction or other collateral review with respect to the pertinent judgment or claim is pending shall not be counted toward any period of limitation under this subsection.

#### **HISTORY:**

(June 25, 1948, ch 646, § 1, 62 Stat. 965; Nov. 2, 1966, P.L. 89-711, § 1, 80 Stat. 1104; April 24, 1996, P.L. 104-132, Title I, §§ 101, 106, 110 Stat. 1217, 1220.)

#### **HISTORY; ANCILLARY LAWS AND DIRECTIVES**

##### **Prior law and revision:**

This section makes no material change in existing practice. Notwithstanding the opportunity open to litigants to abuse the writ, the courts have consistently refused to entertain successive "nuisance" applications for habeas corpus. It is derived from H. R. 4232 introduced in the first session of the Seventy-ninth Congress by Chairman Hatton Sumners of the Committee on the Judiciary and referred to that Committee.

The practice of suing out successive, repetitious, and unfounded writs of habeas corpus imposes an unnecessary burden on the courts. See Dorsey v Gill (1945) 148 F.2d 857, cert den 325 U.S. 890, 89 L.Ed. 2003, 65 S.Ct. 1580, in which Miller, J., notes that "petitions for the writ are used not only as they should be to protect unfortunate persons against miscarriages of justice, but also as a device for harassing court, custodial, and enforcement officers with a multiplicity of repetitious, meritless requests for relief. The most extreme example is that of a person who, between July 1, 1939, and April 1944, presented in the District Court 50 petitions for writs of habeas corpus; another person has presented 27 petitions; a third, 24; a fourth, 22; a fifth, 20. One hundred nineteen persons have presented 597 petitions--an average of 5."

This section was enacted as amended by the Senate with the following explanation:

"The amendment to section 2244 is proposed by the Judicial Conference of Senior Circuit Judges. The original language of the section denies to Federal judges the power to entertain an application for a writ of habeas corpus where the legality of the detention has been determined on a prior application for such a writ, and the later application presents no new grounds. The amendment proposed to modify this provision so that, while a judge need not entertain such a later application for the writ under such circumstances, he is not prohibited from doing so if in his discretion he thinks the ends of justice require its consideration.

"In view of the amendment which will permit a second application to be considered when the ends of justice require it, the original provision of the section, authorizing the judge who heard the original application to grant a rehearing thereof, is omitted by the amendment as unnecessary. Accordingly, the reference to rehearing in the catch line of the section is omitted."

##### **Amendments:**

1966. Act Nov. 2, 1966 designated existing matter as subsec. (a), deleted therefrom ", or of any State," following "pursuant to a judgment of a court of the United States", and added subsecs. (b) and (c).

1996. Act April 24, 1996, in subsec. (a), substituted ", except as provided in section 2255." for "and the petition presents no new ground not theretofore presented and determined, and the judge or court is satisfied that the ends of justice will not be served by such inquiry."; substituted subsec. (b) for one which read: "(b) When, after an application, hearing on the merits of a material factual issue, or after a hearing on

# **EXHIBIT B**



*Clerk; PLEASE DATE + STAMP THIS COPY WHEN MOTION IS FILED  
AND RETURN TO ME. Thank you JP.*

COMMONWEALTH OF MASSACHUSETTS

## DEDHAM SUPERIOR COURT

NORFOLK, SS

NOS. 84001-014

COMMONWEALTH	*	<u>MOTION FOR APPOINTMENT OF</u>
	*	
V.	*	<u>COMMITTEE FOR PUBLIC COUNSEL SERVICES</u>
	*	
JOSEPH DOCKHAM	*	<u>POST CONVICTION SCREENING PANEL</u>

Now comes the Defendant, Joseph Dockham, in the above entitled action, Whom acting pro-se moves the Honorable Court to appoint the Committee for Public Counsel Services Post Conviction Screening Panel to review his case.

1. The Defendant, states that after being advised to contact the committee for public counsel services, and with the advise of C.p.c.s. now comes before with his motion to appoint.

2. The Defendant, states that given the opportunity to have C.p.c.s. Post conviction screening panel review his case he feels that he would have strong issues with which to move forward with a rule 30 under post conviction relief.

3. The Defendant, states that due to his present incarceration he is unable to afford to retain private counsel, thus effectively precluding him for proper representation.

4. The Defendant, states that due to his incarceration he is indigent in that he is a person whom is without funds to pay for any fees incurred during this action.

THE DEFENDANT, JOSEPH DOCKHAM PRAYS THAT THE HONORABLE COURT  
WOULD GRANT TO HIM THIS MOTION NOW SET BEFORE IT.

This 3rd day of January in the  
year of the Lord 1996

SO S: RESPECTFULLY SUBMITTED,

*Joseph Dockham*  
JOSEPH DOCKHAM Pro-Se  
12 Administration Road  
Bridgewater, MA 02324

COMMONWEALTH OF MASSACHUSETTS

DEDHAM SUPERIOR COURT

NORFOLK, SS

NOS. 84001-014

COMMONWEALTH

V.

JOSEPH DOCKHAM

AFFIDAVIT IN SUPPORT OF APPOINTMENT  
OF C.P.C.S. POST CONVICTION  
SCREENING PANEL

I, JOSEPH DOCKHAM, hereby depose and say:

1. That upon the advice of the committee for public counsel services I have moved to file said motion before this Honorable Court. (please see attached item A)

2. That based upon the decision rendered by Judge Barton in regard to the Amarault case that there are similarities in my case that with the proper representation can be brought forth.


3. That at the time of trial I was effectively precluded from proper trial representation due to the lack of skill and training of my then court appointed attorney in regard to the nature of the offense to which I was charged.

4. That given the opportunity to have the post conviction screening panel review my case that several pertinent issues will be brought forward that will allow for grounds with which to move toward post conviction relief under a rule 30.

I, JOSEPH DOCKHAM, have made the affidavit upon first hand knowledge and observation as to the facts, I have relied on specific facts, those facts that are true to the best of my knowledge.

I have made this Affidavit under the pains and penalty of perjury pursuant to Superior Court Rule 15 and G.L. 268 §1A on this 3rd day of January 1996.

RESPECTFULLY SUBMITTED,

  
Joseph Dockham  
12 Administration Rd  
Bridgewater, MA 02324



WILLIAM J. LEAHY  
Chief Counsel

*The Commonwealth of Massachusetts*  
*Committee for Public Counsel Services*

*470 Atlantic Avenue, Suite 700, Boston, MA 02110*

TEL: (617) 482-6212  
FAX: (617) 988-8495

HELEN FREMONT  
ACTING DEPUTY CHIEF COUNSEL  
PRIVATE COUNSEL DIVISION

JAMES M. DOYLE  
DEPUTY CHIEF COUNSEL  
PUBLIC COUNSEL DIVISION

December 6, 1995

WRITER'S DIRECT DIAL NUMBER

Mr. Joseph E. Dockham, W-43918  
Southeastern Correctional Center  
12 Administration Road C1 #4  
Bridgewater, MA 02324

Dear Mr. Dockham:

Your letter of November 8, 1995 received by this office November 16 has been referred to me for review.

The Committee for Public Counsel Services is able to automatically assign counsel only when there is a right to counsel. In a criminal case, a right to counsel exists only for the trial stage of a case and the direct appeal. Since both of those levels are over in your case, you will have to file a pro se motion with your trial judge (if she/he has retired, then with the clerk of the court in which your trial was held) asking that the court appoint the Committee for Public Counsel Services Post Conviction Screening Panel. If the panel is appointed, an experienced attorney will review your case and recommend to the Committee for Public Counsel Services' Chief Counsel William J. Leahy whether counsel is "necessary" and whether he should take the extraordinary step of assigning counsel in your case. While this can be a time consuming process since our panel is small, it is the only way to seek counsel at this stage of your case.

Good luck to you. I have enclosed a copy of the notice sent to all Superior Court judges regarding the Panel. If your pro se motion to have the Post conviction Screening Panel appointed is denied, please let me know.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Leslie Walker".

Leslie Walker, Esq.  
Dir., Legal Resources  
& Support Services  
Private Counsel Division

LW:pw

ENCLOSURE

(ITEM-A)

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, SS

NOS. 84001-014

AFFIDAVIT OF INDIGENCY AND REQUEST FOR WAIVER,  
SUBSTITUTION OR STATE PAYMENT OF FEES AND COSTS

Pursuant to General Laws c. 261, §§ 27A-G, the applicant,  
**Joseph Dockham** affirms as follows:

1. Applicant is indigent in that he is a person:

Whose income, after taxes is 125%, or less of the current poverty threshold annually established by the Community Services Administration pursuant to § 625 of the Economic Opportunity Act, as amended.

2. Applicant respectfully requests that all costs and fees including but not limited to filing fees, copy fees and production fees ect. Be either waived or paid for by the state.

Signed under the pains and penalties of perjury:

This 3rd day of January 1996.

Signature of applicant:

Joseph Dockham  
Typed/Printed name:

Joseph Dockham  
Address of Applicant:

Southeastern Correctional  
Center  
12 Administration Rd.  
Bridgewater, MA 02324



COMMONWEALTH OF MASSACHUSETTS

DEDHAM SUPERIOR COURT

NORFOLK, SS

NOS.                     

COMMONWEALTH

v.

\* MOTION FOR APPOINTMENT OF

\* COMMITTEE FOR PUBLIC COUNSEL SERVICES

\* POST CONVICTION SCREENING PANEL

Now comes the Defendant, Joseph Dockham, in the above entitled action, Whom acting pro-se moves the Honorable Court to appoint the Committee for Public Counsel Services Post Conviction Screening Panel to review his case.

1. The Defendant, states that after being advised to contact the committee for public counsel services, and with the advise of C.p.c.s. now comes before with his motion to appoint.

2. The Defendant, states that given the opportunity to have C.p.c.s. Post conviction screening panel review his case he feels that he would have strong issues with which to move forward with a rule 30 under post conviction relief.

3. The Defendant, states that due to his present incarceration he is unable to afford to retain private counsel, thus effectively precluding him for proper representation.

4. The Defendant, states that due to his incarceration he is indigent in that he is a person whom is without funds to pay for any fees incurred during this action.

THE DEFENDANT, JOSEPH DOCKHAM PRAYS THAT THE HONORABLE COURT WOULD GRANT TO HIM THIS MOTION NOW SET BEFORE IT.

This 3rd day of January in the year of the Lord 1986

RESPECTFULLY SUBMITTED,

Joseph Dockham  
JOSEPH DOCKHAM Pro-Se  
12 Administration Road  
Bridgewater, MA 02324

1/23/96  
Referred to  
CPCS for  
review as to  
appointment  
of counsel  
on  
post-  
conviction  
Matters.  
(Bershenkov 11)  
DJ

43

# EXHIBIT C





# *The Commonwealth of Massachusetts*

## *Committee for Public Counsel Services*

*470 Atlantic Avenue, Suite 700, Boston, MA 02210*

WILLIAM J. LEAHY  
Chief Counsel

TEL: (617) 482-6212  
FAX: (617) 988-8495

PATRICIA A. WYNN  
DEPUTY CHIEF COUNSEL  
PRIVATE COUNSEL DIVISION  
JAMES M. DOYLE  
DEPUTY CHIEF COUNSEL  
PUBLIC COUNSEL DIVISION

WRITER'S DIRECT DIAL NUMBER

February 1, 1996

Mr. Joseph E. Dockham, W-43918  
12 Administration Rod. CI #4  
Bridgewater, MA 02324

Dear Mr. Dockham:

It could take a couple of months before you hear from the court. It's a good idea to send reminder letters every two weeks. Did you attach a copy of the memo to judges? If you didn't send the memo to the court you should. I've enclosed another copy.

Good luck.

Very truly yours,

*Leslie Walker* pw

Leslie Walker, Esq.  
Dir., Legal Resources  
and Support Services  
Private Counsel Division

LW:pw

lw\joseph.doc



WILLIAM J. LEAHY  
CHIEF COUNSEL

# *The Commonwealth of Massachusetts*

## *Committee for Public Counsel Services*

*470 Atlantic Avenue, Suite 700, Boston, MA 02210*

TEL: (617) 482-6212  
FAX: (617) 988-8495

PATRICIA A. WYNN  
DEPUTY CHIEF COUNSEL  
PRIVATE COUNSEL DIVISION

JAMES M. DOYLE  
DEPUTY CHIEF COUNSEL  
PUBLIC DEFENDER DIVISION

WRITER'S DIRECT DIAL NUMBER

*Mr. Joseph Docklan*

Your request for counsel has been referred to a Committee for Public Counsel Services panel of experienced attorneys assigned to review post-conviction collateral matters. An attorney from that panel has been appointed to review your case and make a recommendation to Chief Counsel William J. Leahy as to whether counsel should be assigned to represent you.

The process takes several months, so please be patient. You will hear from us once a decision has been made as to whether to appoint counsel. Until then, good luck. If you have any questions, please write Susan Jacobson, Paralegal, at the above address.

**DEIRDRE L. THURBER**

*Attorney*

*10 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

March 18, 1996

Joseph Dockham  
W-43918  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

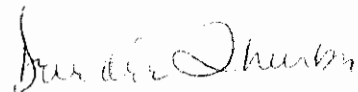
Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84901 - 84012

Dear Mr. Dockham:

I have appointed by the Committee for Public Counsel Services to review your case to determine if lawyered post-conviction relief is warranted. Please be advised that I am not your attorney. If, after I review all the relevant materials and complete my research, I determine that there is legal merit in your appeal and CPCS agrees, I will then be appointed as your attorney. To assist me in making my determination, I need to review the Grand Jury transcripts, any hearing transcripts and the trial transcript. If you have those, or any other important documents that you want me to consider in your possession, I would appreciate it if you could forward them to me at your earliest convenience.

Thank you for your co-operation.

Sincerely,



Deirdre Thurber

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

April 3, 1996

Joseph Dockham  
W-43918  
Southeastern Correctional Center  
12 Administration Road C1 #4  
Bridgewater, MA 02324


Re: *Commonwealth v. Joseph Dockham*  
No. 84001-12

Dear Mr. Dockham:

I received your letter yesterday. Thank you for the information concerning your files and transcripts. I have written to Mr. Doolin for a copy of the trial transcript. Depending on the issues raised by my review of the trial, I will decide what information I need from Mr. Cunningham and will make the appropriate request of him.

Please feel free to contact me as a general rule on Mondays and Wednesdays until 3 p.m. and Fridays until 2:30 pm. I advise waiting a couple of weeks until I have the opportunity to receive and review your trial transcript. Until I have done that, I will not have sufficient information to intelligently discuss your case.

Sincerely,



Deirdre Thurber

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road*

*Plymouth, MA 02360*

*(508) 224-2980*

May 9, 1996

Joseph Dockham  
W-43918  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
No.: 84001 84012

Dear Mr. Dockham:

I have completed reviewing your trial transcripts as well as studying the Supreme Judicial Court's decision in your direct appeal. I have also reviewed the *Amirault* decisions since they are the leading cases in this area. I spoke at length with Mr. Doolin at your request. He thought that a possible issue for appeal in your case might be the lack of confrontation between you and the child, however, that issue was discussed thoroughly by the SJC, so cannot be the subject of an additional appeal pursuant to Rule 30.

Before I make my final conclusion and recommendation to CPCS, I want to review the Rule 30 Motion that you filed in 1988 and its denial. I am writing to the Clerk to obtain a copy of that today. If there is anything else you would like me to consider, please notify me as soon as possible so that I can complete my review thoroughly and expeditiously.

In the interim, if you have any questions or concerns, please do not hesitate to contact me.

Sincerely,



Deirdre Thurber

**DEIRDRE L. THURBER**

*Attorney*

19 Bloody Pond Road

Plymouth, MA 02360

(508) 224-2980

June 5, 1996

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road C1 #4  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
No.: 84001-12

Dear Mr. Dockham:

I have reviewed the transcript concerning the state witness who was apparently present in court but not called to testify. That witness was called in the event that the assistant district attorney chose to present rebuttal testimony. Rebuttal testimony is testimony that contradicts something said by the defense witnesses. Reading between the lines and based upon her questioning of you concerning the dumpsters behind the storage area, I assume this witness might have had something to say about whatever she saw in those dumpsters. The ADA did not need that evidence to prove her case against you. The evidence would only have gone to show that you lied in some way in your testimony. The fact that the ADA chose not to put that witness on the stand did not hurt you, but instead kept evidence off that might have indicated that your trial testimony was untruthful. Obviously, under these conditions, the decision of the defense attorneys not to put this witness on the stand was in your best interest.

I have also reviewed the transcripts and docket entry sheets to ascertain exactly under which statutes you were prosecuted. You were charged with violation of M.G.L. c. 272 sec. 29A which involves the taking of pornographic photographs only, not the dissemination (publication) of them. Nowhere in the statute or in the cases that have been prosecuted under the statute has there been a requirement that the photographs be presented as evidence. As I explained in my earlier letter, there are many instances where weapons, personal property and other such "evidence" is unavailable, but the witness's testimony concerning the existence at one time of that evidence is sufficient if believed by the jury. Apparently in your case, the jury believed Eric's testimony concerning the taking of pictures while involved in these activities.

My review and research reveals no legal issue of merit that has a reasonable possibility of success if presented in a Rule 30 Motion. I will be forwarding my recommendation to the Committee for Public Counsel Services shortly. I regret that there is nothing more that I can do on your behalf. If the



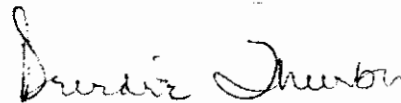
Joseph Dockham

June 5, 1996

Page 2

Committee agrees with my assessment, you can still proceed *pro se*. Unless I hear from you to the contrary, I will return your papers to Mr. Doolin. I wish you the best in your future endeavors.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deirdre Thurber".

Deirdre Thurber



WILLIAM J. LEAHY  
CHIEF COUNSEL

# *The Commonwealth of Massachusetts*

## *Committee for Public Counsel Services*

*470 Atlantic Avenue, Suite 700, Boston, MA 02210*

TEL: (617) 482-6212  
FAX: (617) 988-8495

PATRICIA A. WYNN  
DEPUTY CHIEF COUNSEL  
PRIVATE COUNSEL DIVISION

JAMES M. DOYLE  
DEPUTY CHIEF COUNSEL  
PUBLIC DEFENDER DIVISION

WRITER'S DIRECT DIAL NUMBER

July 8, 1996

Mr. Joseph E. Dockham  
12 Administration Road, C1#4  
Bridgewater, MA 02324

RE: Commonwealth v. Joseph Dockham  
Norfolk Superior Court No(s). 840001-012

Dear Mr. Dockham:

Massachusetts law does not provide you with a right to have an attorney appointed to represent you in the proceeding currently before the court. However, an attorney from the Committee for Public Counsel Services (CPCS) Post-Conviction Collateral Screening Panel was assigned to review your case and inform me, as chief counsel, whether your case presented circumstances that would warrant my assigning counsel, despite your not having a "right" to a lawyer.

The attorney assigned to review your case has advised me concerning the history and current status of this proceeding. I have decided not to assign a lawyer to represent you.

If you wish to proceed pro se, you may find helpful the self-help materials written by the staff of Massachusetts Correctional Legal Services. You can request a copy of the packet in writing from either MCLS at 8 Winter Street, Boston, MA 02108, or CPCS, 470 Atlantic Avenue, Suite 600, Boston, MA 02110.

I regret that limited resources and legal requirements restrict the availability of legal assistance our office can provide.

Very truly yours,

*William Leahy*  
William J. Leahy  
Chief Counsel

C-1h

WJL/ds

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

July 29, 1996

Joseph Dockham  
W-43918  
Southeastern Correctional Center  
12 Administration Road C1 #4  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-84012

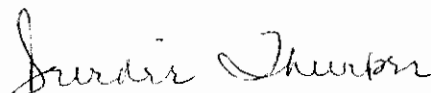
Dear Mr. Dockham:

While I was doing research in another case on Friday, I came across the enclosed case, *Commonwealth v. Federico*, which was just decided by the Appeals Court on June 27, 1996. It had not been published when I was doing my review of your case. I did some further research after reading *Federico*, and found *Commonwealth v. Perkins*, likewise enclosed. Apparently, the prosecution's use of Brandt and Paradise has been criticized in the past and has been held to be error in very specific situations.

If you are interested in having me re-review that portion of the trial testimony involving their testimony and any objections made thereto, please have only that part of the transcript returned to me. I am making no assurances as to whether you will have any appellate argument based on this, but I am willing to research the issue for you.

I look forward to hearing from you in the near future.

Sincerely,



Deirdre Thurber

Enclosure

**DEIRDRE L. THURBER**

*Attorney*

*10 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

October 9, 1996

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: S4001-12

Dear Mr. Dockham:

I have finished my second review of your transcripts. Hopefully, you have read the copies of the *Federico* and *Perkins* cases that I forwarded so that the explanation that follows will make sense.

As you can tell from reviewing those cases, the SJC reversed convictions in child sexual abuse cases where Doctors Paradise and Brant testified in such a manner that the Court felt that their testimony usurped the function of the jury in determining the credibility of the victim. The doctors' testimony in those cases were in response to hypothetical questions wherein the facts in the questions mirrored the testimony of the witnesses. In that way, the answers of the doctors served as corroboration of the witnesses' credibility, which is within the sole purview of the jury.

You have two problems in your case. First, Dr. Brant did not testify in response to hypotheticals that included specific references to the abnormal behavior being exhibited by Eric which were consistent with the behavior of sexually abused children - her testimony was general, like a mini-education. It is my belief that her testimony produced the same result - she made sure that she included in her examples of typical behavior of abused children behavior that Baker said Eric was exhibiting (sexual play, fear of people and places, hiding portions of the body involved in the abuse, etc.). The conclusion the prosecution wanted to draw is obvious - Eric's behavior was the same as that displayed by sexually abused children. Second, the issue of the admissibility of the expert testimony has already been presented to the SJC in your direct appeal. Granted, the Court did not specifically address the issue of whether the doctor's testimony was an illegal bolstering of the witness's credibility, but, if the Court is looking for a way to uphold your conviction and do no work, all they have to do is cite their first decision.

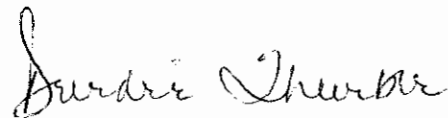
Joseph Dockham  
October 9, 1996  
Page 2

I have reported all this to the Committee for Public Counsel Services, leaving the ultimate decision in their hands. You see, my obligation is not only to try to find a meritorious legal issue, but also one that has a likelihood of success. This one is too close for me to call as to whether there is a likelihood of success. I have suggested to them that this issue, in conjunction with an affidavit from an expert concerning the inherent unreliability of the testimony of a five year old, recalling events that occurred when he was three (assuming one could find an expert with such an opinion), might produce a more compelling Rule 30 motion. Quite frankly, I don't know what their budgeting limitations are, and if it is possible to get the funds at the appellate level to do such an investigation. As soon as I hear anything from them, I will pass it on to you.

This shouldn't be totally disappointing news. If the Committee decides not to appoint counsel, at least you will have a legitimate issue you can pursue on your own. If you decide to proceed after the Committee has made its decision, I will give you what advice I can to help you prepare a Rule 30 motion, if you want my assistance.

If you have any questions, please do not hesitate to contact me. Generally, I am in the office until 2:30 pm. If I do not answer your call, it is because I am not in the office - please try again. I will keep you informed of any developments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deirdre Thurber".

Deirdre Thurber

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

October 21, 1996

Joseph Dockham  
#W-43918  
Southeastern Correctional Center  
12 Administration Road C1 #4  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84061-84012

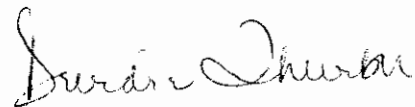
Dear Mr. Dockham:

I got a reply from CPCS today about the assignment of counsel to represent you in a motion for postconviction relief based upon the introduction into evidence of the testimony of Doctors Paradise and Brandt. CPCS has agreed to appoint counsel.

Since I have read the transcripts and have done the preliminary research, it is logical that I represent you. I am more than glad to do so, but I must tell you that my caseload means that I will not be able to start on this Rule 30 until December or January. If that delay is acceptable to you, please let me know. Otherwise, CPCS will assign another attorney to represent you, but I was asked to tell you that it will take some time to make another appointment and then, of course, it will take time for that attorney to review your transcripts. The decision is yours. Please do not hesitate to contact me if you wish to discuss this further.

I await notification from you as to what you want to do.

Sincerely,



Deirdre Thurber



**DEIRDRE L. THURBER**

*Attorney*

*10 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

March 18, 1997

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

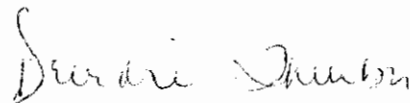
Re: Commonwealth v. Joseph Dockham  
Nos.: 84001-84012

Dear Joe:

After speaking with you yesterday, I checked my file. I was relieved to see that I'm not as unorganized as I sounded on the telephone. I did indeed write to the ADA Hinkle back on January 3, but I never received a reply. I will write to her again, as well as to Attorney Cunningham. If I get a response, I will let you know.

In the interim, if you have any other questions or concerns, please do not hesitate to contact me. I will keep you apprised.

Sincerely,



Deirdre Thurber

**DEIRDRE L. THURBER**

*Attorney*

19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980

March 26, 1997

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 34001-12

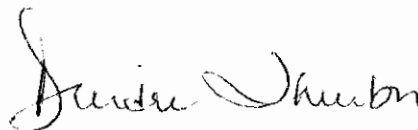
Dear Joe:

I wanted to let you know that I finally received the tape of Eric's statements to Judy Baker from the DA's office yesterday. Apparently Hinkle is leaving to join the U.S. Attorney's Office, so my request to her got lost in the shuffle. Another member of the Norfolk DA's Office called me and promised to mail the tapes, and, miracle of all miracles, followed through on that promise. I have not yet listened to them, but I hope to later today.

I also heard from Mr. Cunningham. He indicated that he would check his files for the tapes, but that will be unnecessary now. As we discussed, since the focus of the Rule 30 is the inadmissibility of the expert testimony, the contents of the tapes are not really important to the Rule 30. I plan to start on that motion within the next week or so. I'm not the speediest when it comes to writing, but I will try to get it finished as best I can. Please don't hold me to a time frame, because unexpected interferences always seem to pop up and delay my schedule. I will forward my finished product to you as soon as it is finished.

If you have any questions, please do not hesitate to contact me.

Sincerely,



Deirdre Thurber

**DEIRDRE L. THURBER**

*Attorney*

*10 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2080*

April 28, 1997

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

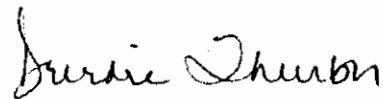
Re: *Commonwealth v. Joseph Dockham*  
No.: 84001-84012

Dear Mr. Dockham:

I received your letter of April 19, 1997, and I have had the opportunity to listen to the tape of the foster mother questioning Eric. I agree that it is disturbing, and I would like an expert to evaluate it. I have enclosed a copy of the Defendant's Motion for Indigent Court Costs and supporting affidavit of reviewing counsel that I am submitting to the Court today for just such an expert. I am not overly hopeful that it will be granted - there is caselaw that defendants are not entitled to court funds for POST-CONVICTION proceedings, just trial and direct appeal. Not all judges and ADAs know of the case, so there is a chance that this might be granted. However, it is more likely that it will not be granted. Nonetheless, it is worth the try, just so that we can say that we tried everything.

As soon as I hear anything on this Motion, I will notify you. In the interim, if you have any questions, please do not hesitate to contact me.

Sincerely,



Deirdre Thurber

Enclosure

COMMONWEALTH OF MASSACHUSETTS  
NORFOLK SUPERIOR COURT

NORFOLK, ss.

Nos.: 84001-84012

---

COMMONWEALTH OF MASSACHUSETTS

v.

JOSEPH DOCKHAM,  
*Defendant/Appellant*

---

DEFENDANT'S MOTION FOR INDIGENT COURT COSTS

Now comes the defendant, having been determined to be indigent, in the above-captioned matter and moves this Honorable Court to authorize expenses not to exceed One Thousand Dollars (\$1000.00) pursuant to M.G.L. c. 261, sec. 27C *et seq.* for a psychiatric expert to evaluate the reliability of the testimony of a three year old victim testimony in light of the improper questioning procedures used to elicit the information concerning the abuse and the recall abilities of a five year old witness.

Defendant, through counsel, states that the requested funds are "reasonable necessary to assure (him) as effective . . . a defense as he would have if he were financially able to pay", M.G.L. c. 261, sec. 27C(1), *Commonwealth v. Lockley*, 381 Mass. 156 (1980). Such funds are required to protect the defendant's rights to equal protection of the law, to present a defense, and to prepare a Motion for Post-Conviction Relief as well as to provide the defendant with due process of law as guaranteed by the 5th, 6th and 14th Amendments to the United States Constitution and by Article XII of the Declaration of Rights of the Constitution

of the Commonwealth of Massachusetts. The reasons for such a request are set forth in the attached affidavit of counsel.

Dated: April 28, 1997

Respectfully submitted,  
Joseph Dockham  
By screening counsel,

*pl*

Deirdre Thurber  
BBO # 560251  
19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980

COMMONWEALTH OF MASSACHUSETTS  
NORFOLK SUPERIOR COURT

NORFOLK, ss.

Nos.: 84001-84012

---

COMMONWEALTH OF MASSACHUSETTS,

v.

JOSEPH DOCKHAM,  
*Defendant/Appellant*

---

AFFIDAVIT IN SUPPORT OF MOTION FOR FUNDS

I, Deirdre Thurber, hereby depose and say:

1. I am the attorney assigned by the Committee for Public Counsel Services to review the above-captioned case and provide legal services if there is a legal issue of merit to be presented in a motion pursuant to Mass. R. Crim. P. 30.

2. I have investigated this case thoroughly and have found that, in addition to the legal argument concerning the inadmissibility of testimony by Drs. Paradise and Brant, which has resulted in reversals in two Norfolk County sexual abuse prosecutions, *Commonwealth v. Perkins*, 39 Mass. App. Ct. 577 (1995) and *Commonwealth v. Federico*, 40 Mass. App. Ct. 616 (1996), there is an issue as to the reliability of the recollection of a three year old. There is substantial evidence that the child witness was improperly coached as to his memories, which requires evaluation by an expert for presentation to the Court.

3. The defendant is indigent and thus in need of funds from the Court to pay for the services of an expert.



4. No such evaluation was done pre-trial and the study of the reliability and questioning of such witnesses had expanded in the intervening years.

5. In light of the fact that this defendant's incarceration rests solely on the testimony of a five year old, without further corroboration, the interests of justice demand that he be entitled to thoroughly investigate the credibility and reliability of that five year old.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY this  
28th day of April, 1997.

51  
Deirdre Thurber  
BBO # 560251  
19 Bloody Pond Road  
Plymouth, MA  
(508) 224-2980

**DEIRDRE L. THURBER**

*Attorney*

*18 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2880*

July 24, 1997

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road D-105  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-84012

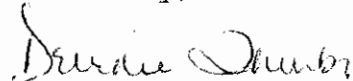
Dear Joe:

I received your letter of July 17, 1997. It's just as well that you have not tried to call, since I have been out of the office most of July, trying to get some writing done on some of my older cases. I wish I had news for you, but I haven't heard anything concerning the motion for expenses. Consequently, enclosed please find a copy of a letter that I sent today to the Clerk's Office, requesting information as to the status of that motion. As far as I know, the DA's office has not opposed the motion, since they are required to forward copies of all such motions and memoranda, and I have not received anything from them.

If/when I receive a response to the enclosed, I will be sure to let you know. I want to express my appreciation for your patience. I know it must be difficult to always seem to be waiting, so I am particularly thankful that you understand that I have other commitments and that "these things take time."

If you should have any questions, please do not hesitate to contact me. I hope to be in the office more frequently in August. I do not keep Saturday hours, but if you tell me specifically what day and time you plan to call, I will make every effort to be available, even if after 5 or on a Saturday.

Sincerely,



Deirdre Thurber

Enclosure

July 24, 1997

Nicholas Barbadoro, Clerk  
Norfolk County Superior Court  
Courthouse  
650 High Street  
Dedham, MA 02026

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-84012

Dear Mr. Barbadoro:

On April 28, 1997, I submitted a motion for Indigent Court Costs on behalf of the above-captioned defendant. To date, I have not been notified of any disposition of that motion. Kindly advise me as to the status or, alternatively, if there is any action that I should take to insure that the motion will be considered.

Thank you for your assistance.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham

November 16, 1997

Nicholas Barbadoro, Clerk  
Norfolk County Superior Court  
Courthouse  
5650 High Street  
Dedham, MA 02026

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Mr. Sullivan:

Kindly forward to me a copy of the probation  
report used in sentencing in the above-captioned case  
relative to Mr. Dockham.

Thank you for your co-operation.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road*

*Plymouth, MA 02380*

*(508) 224-2980*

December 1, 1997

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
No.: 84001-12

Dear Joe:

A couple of things have happened in the last week which might provide some hope for you.

First, I received a call from a Probation Officer in response to my letter asking for a copy of the probation report used at sentence that Cunningham thinks may contain the statements of the neighborhood children. He tells me that I have to make a motion to get that information and that to make the search easier, you should specify, as best you can, the names of the witnesses you are interested in. If you can get me that kind of information, I will gladly submit a motion.

Second, please see the enclosed article from the Sunday Globe of November 30. After I read this, I called the attorney, Jim Sultan. He was very helpful, and promised to send me a copy of Dr. Bruck's affidavit in the event that we can use it as a springboard for your case. I told him some of the details and he thought we might get somewhere using this line of defense. It may take some money for an expert, though. Is that a possibility for you? As you know, I can't get court funds post-conviction and appeal, so any expenses will have to be borne by you. Let's see what this affidavit says and if we think we can use it before we worry about money. Obviously, I will forward a copy of that affidavit as soon as I receive it.

Let me know about the names of the children (or addresses - anything that will identify them for the court) or if you have any other questions.

Sincerely,

*Deirdre Thurber*

Deirdre Thurber

Enclosure

January 27, 1998

Edward Siudut, Chief Probation Officer  
Norfolk County Probation Office  
20 Eastbrook Road, Suite 101  
Dedham, MA 02026

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Mr. Siudut:

I requested a copy of my client's probation report in correspondence addressed to Mr. Barbadoro on November 16, 1997. In response, a member of your staff called me and asked if I could obtain the names of the particular persons who gave statements of interest. To the best of my client's memory, those persons include the Burtons, the Smiths and the family living next door at 40C. I would appreciate receiving copies of those statements.

Thank you for your co-operation. If you have any additional questions, please do not hesitate to contact me.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham



*DEIRDRE L. THURBER*

*Attorney*

*19 Bloody Pond Road*

*Plymouth, MA 02360*

*(508) 224-2980*

January 27, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*

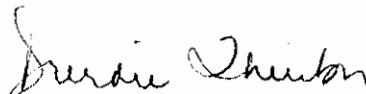
Dear Joe:

I received your letter of January 24, 1998. I'm glad that you're okay, even if you have been having some difficulty with the DOC and your SDP status. I hope that you have been able to make contact with Attorney Cunningham and that everything has been resolved. As I told you earlier, he led me to believe in my telephone conversation with him that he would gladly handle the situation for you.

I will send those names to the probation officer who called me and he can see if the probation report included statements from those individuals and he can forward copies of those statements. If he does, I will forward copies to you.

I think it might be in your best interests (especially financially) if we wait to see how the LaFave case works out. If they win, we will have precedence for your case. And it may save you the expense of your own expert. What do you think? Let me know. If you have any questions, give me a call.

Sincerely,



Deirdre Thurber

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

February 13, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: Commonwealth v. Joseph Dockham  
No.: 84001-12

Dear Joe:

I received your letter of February 1, 1998. I hope by now that your SDP situation is cleared up and that you have had some response from Attorney Cunningham.

I received another call from the Probation Officer. He cannot release statements to me without a court order, therefore enclosed please find copy of a motion to release those statements that I served today with the Court. Unfortunately, my experience has been that the Courts don't act quickly on these motions (if at all), but since there is no objection by probationm hopefully, we won't have to wait for a response.

I'm glad that you agree that we should wait to see how the LaFave case does. If they are successful, it will be much easier for us and if they are not successful, either we can learn from their mistakes or take another approach.

I'll keep you informed of any news. Let me know if you have any questions.

Sincerely,



Deirdre Thurber

Enclosure

COMMONWEALTH OF MASSACHUSETTS  
NORFOLK SUPERIOR COURT

NORFOLK, ss.

No. 84001-12

---

COMMONWEALTH OF MASSACHUSETTS

v.

JOSEPH DOCKHAM  
*Defendant*

---

MOTION TO RELEASE PORTION OF THE PROBATION REPORT

Now comes the defendant, Joseph Dockham, in the above-entitled case and moves that this Honorable Court order that the Probation Office release to the defendant's counsel witness statements contained in the Probation Report relative to the defendant's case.

In support thereof, counsel for the defendant states that she has been assigned by the Committee for Public Counsel Services to investigate the merits of a motion for post-conviction relief for the defendant. Investigation and research has found that there is a developing area of law and psychology concerning the methodology of interviewing child witnesses and the effect on the reliability of their testimony. Counsel needs access to the statements of certain child witnesses believed to be contained within the Probation Report, but has been advised by the Probation Officer that these statements cannot be released without a court order to do so.

WHEREFORE, the defendant respectfully requests that this motion be granted and that the Probation Office be ordered to turn over to counsel the statements previously requested.

Dated: February 13, 1998

By the defendant,  
Joseph Dockham  
By his attorney,

/s/

Deirdre Thurber  
BBO # 560251  
19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

June 10, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Joe:

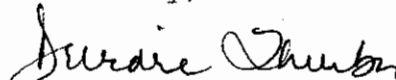
As per our telephone conversation of June 9, enclosed please find a copy of the letter that I forwarded to the Clerk concerning that motion that I filed months ago to get your probation reports. I am also enclosing three releases (sign and return two, keep one for your files) so that I can request the report that you wanted to see.

As I said, I regularly monitor the Social Law Library page on the Internet, looking for the judge's decision in the Amirault hearing. As soon as I hear anything, I will be sure to let you know.

I think it's a good idea to get the release notarized (I know that you don't like to leave your legal materials around) or witnessed, at least. As soon as you return the two signed releases, I will request the "official version".

If you have any other questions, please do not hesitate to contact me.

Sincerely,



Deirdre Thurber

Enclosures

June 10, 1998

Nicholas Barbadoro, Clerk  
Norfolk Superior Court  
Court House  
650 High Street  
Dedham, MA 02026

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Mr. Barbadoro:

I filed a motion for the release of reports in the possession of the Probation Department on February 14, 1998 in the above-captioned case. To date, I have received no response. Kindly check on the status of that motion and let me know if there is something further that I should do to receive a ruling.

Thank you for your attention.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham



**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

June 14, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

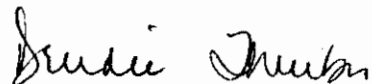
Dear Joe:

I received notification from the Clerk's Office that they never received (according to them) my motion for the release of the probation reports. I am forwarding another copy, but I won't send another copy to you, unless you let me know that you want one.

More importantly, the news broke Friday that Judge Borenstein granted the motion for a new trial AND ruled that the children's veracity had been so infected by the improper interviewing techniques that they COULD NOT TESTIFY in any retrial. Needless to say, the DA is appealing, but this news is certainly promising to you. I want to see the full text of the judge's decision (it has not yet been posted on the Internet legal page) before I contact Amirault's attorneys, so, be hopeful, but don't get cocky.

I'll let you know as soon as I hear anything more.  
Keep the faith.

Sincerely,



Deirdre Thurber

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

July 3, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

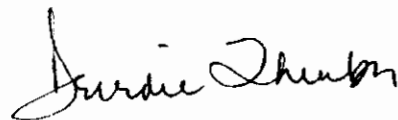
Re: *Commonwealth v. Joseph Dockham*

Dear Joe:

As I indicated in our telephone conversation earlier, enclosed please find a copy of the opposition I just received from the DA's office to our motion to obtain portions of the Probation Department records. I am giving some thought to filing a reply. Let me know what you think.

I look forward to receiving your notes on the LeFave decision (as well as finding the time to sit and read it myself). Talk to you soon.

Sincerely,



Deirdre Thurber

Enclosure

COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS.

Superior Court  
No. 84001 - 12

\_\_\_\_\_  
Commonwealth of Massachusetts )

v. )

Joseph Dockham )  
\_\_\_\_\_ )

Commonwealth's Opposition to the Defendant's Motion to  
Release a Portion of the Probation Report

Now comes the Commonwealth and respectfully request this Honorable Court to deny the defendant's motion to release a portion of the probation record. As reasons therefor, the Commonwealth states as follows:

Statement of the Case

The defendant and his girlfriend, Laura Tufts, were tried together for the sexual abuse of a four year old boy and an eighteen month old girl.<sup>1</sup> The defendant is the father of the baby girl, and the co-defendant is the mother of both children. On June 11, 1987, the defendant was convicted of several indictments charging rape, assault with intent to rape, child pornography, and indecent assault and battery of two minor children. On August 27, 1987, the trial judge, Carey, J., sentenced the defendant to not less than 20 years and not more than 25 years at Cedar Junction. In October, 1988, the defendant filed a motion for a new trial which was denied, without hearing by the trial judge. The Supreme Judicial Court affirmed the defendant's

<sup>1</sup> The codefendant's appeal is reported in Commonwealth v. Tufts, 405 Mass. 610 (1989).

convictions and the denial of his motion for a new trial in Commonwealth v. Dockham, 405 Mass. 618 (1989)(attached).

#### Statement of Facts

On June 16, 1986, a social worker from the Department of Social Services [DSS] removed two small children from the defendant's home, after the four year old boy made allegations of physical and sexual abuse by his mother, and the defendant, his mother's live in boyfriend.<sup>2</sup> On June 27, 1986, DSS placed the small children in the care of a foster family, where they remained until the time of trial.

At trial, through videotaped testimony of the young boy, the jury heard evidence that the defendant tried to put his penis in the boy's rectum and that there was some penetration. According to the young boy, the defendant sodomized the child and touched the child's buttocks and penis with his hand. He also testified that "stuff came out." The child further testified that the defendant touched the young girl's vagina with his mouth and that the codefendant, the boy's mother, also touched his penis and the girl's vagina with her mouth and fingers. The testimony revealed that the defendant told the boy to touch his mother's and sister's vaginas with his mouth. The jury also heard evidence that the defendant bit the young boy on the buttocks, that the defendant hit the child with belts, and that the defendants took pictures when the sexual abuse occurred.

---

<sup>2</sup> The Commonwealth relies in part on the statement of facts set forth in Commonwealth v. Dockham, 405 Mass. 618, 619-620 (1989).

### Argument

By motion, the defendant asks this court to order that the Commissioner of Probation turn over to defense counsel the "statements of certain child witnesses contained within the probation report" (Def. Mot. at 1). In support of his request, without citing authority, the defendant asserts that "investigation and research has found that there is a developing area of law and psychology concerning the methodology of interviewing child witnesses and the effect on the reliability of their testimony" (Def. Mot. at 1).

The Uniform Rules on Subpoenas to Court Officials, Rule 3 (2) provides in part:

A party shall be entitled to access to records of the Office of the Commissioner of Probation only as provided by statute or court order. A party seeking a court order permitting access to records of the Office of the Commissioner of Probation shall request such an order from the court in which the underlying matter is pending by written motion which *shall specify the purpose(s) for which access to such records is sought...* (emphasis added).

First, the defendant fails to make a showing as to why he needs access to the probation records, and fails to specify the purpose(s) for which access to such records is sought, as is his burden. While he "believes" that the probation report contains "statements of certain child witnesses," he offers no information to support this claim. He fails to state any particularized need or call the court's attention to any specific record or document which might contain pertinent information. Further, he has made no showing that the methodology that was used to interview the young victims in this case differed in any way from the present prevailing practice, as he neglects to detail either. Accordingly, it is the Commonwealth's position that the defendant has failed entirely to meet the requirements set forth in The Uniform Rules on Subpoenas to Court Officials, Rule 3 (2).

Second, in Commonwealth v. Martin, 355 Mass. 296 (1969), the Supreme Judicial Court held that a defendant charged with unarmed robbery had no statutory or constitutional right to examine, prior to sentencing, part of his probation report containing information about the defendant gathered by the probation department from the defendant himself, his former employers, and others. M.G.L. c. 276 sec. 100, the statute upon which the defendant in Martin relied, provides in part that under the direction of the Commissioner of Probation "record shall be kept of all such cases as the Commissioner may require for the information of the justices and the probation officers....[and that] the information so obtained shall not be regarded as public records and shall not be open for public inspection." Id. at 298. The Court further pointed out that whether a defendant "has a right to see the entire report...is not specifically granted by [M.G.L. c. 276 sec. 100]," but that disclosure to the defendant of information contained in the probation report rests in the discretion of the court. Id. at 302.

While the instant case differs from Martin in that here, the defendant has already been sentenced, the public policy arguments against disclosure of the contents of the probation report are the same in both cases. "The main consideration against full disclosure is the prospect that the revelation of certain material given [to] the probation officer in confidence, would result in the destruction of the sources of such material..." Id. at 303. Quite simply, if all witnesses and informers knew that a defendant would have full access to information obtained by the probation department through investigation and interview, many potential witnesses would be deterred from cooperating fully with law enforcement.

As discussed earlier, the defendant fails to specify which statements he requests, or which interviews he is concerned with. Despite his lack of specificity, it is reasonable to assume



that he seeks information regarding the interviews between the victim and the social worker from DSS. However, the portion of the defendant's probation record containing information about these interviews could be viewed as "privileged communication," thereby necessitating analysis under Commonwealth v. Bishop, 416 Mass. 169, 181-183 (1993).<sup>3</sup>

When interviewed by the social worker, the victim described the physical and sexual abuse that he and his younger sister had sustained at the hands of the defendant. See Commonwealth v. Dockham, 405 Mass. at 620 ("A social worker from [DSS] testified at trial that she had removed the two children from the defendants' home...after the four year old boy had made allegations of physical and sexual abuse by the defendant and the codefendant."). Subsequent to the removal from the home, a formal investigation was conducted, during which the child was interviewed further by DSS. The conversation between the child and the social worker was later admitted at trial as fresh complaint testimony. Id. at 621. It is the Commonwealth's position, therefore, that any information in the defendant's probation record which might pertain to the DSS investigation, is governed by the statutory privilege for

---

<sup>3</sup> The protocol enunciated in Commonwealth v. Bishop, and later fine-tuned in Commonwealth v. Fuller, 423 Mass. 216 (1996) may be summarized as follows:

Stage 1 - Privilege Determination (when the defendant seeks records of an alleged victim, the keeper of the record may claim privilege against disclosure and a judge is then required to hold a hearing to determine in writing whether any privilege applies);

Stage 2 - Relevancy Determination (if the records are found to be privileged, defense counsel is required to make written submission outlining a "good faith, specific and reasonable basis for believing that the records will contain exculpatory evidence which is relevant and material to the issue of the defendant's guilt");

Stage 3 - Access to Relevant Document (the judge provides the Commonwealth and defense counsel with the relevant documents to determine whether disclosure to the trier of fact is necessary to ensure a fair trial);

Stage 4 - Disclosure of Relevant Information (judge makes written ruling on the defendant's motion that disclosure to the trier of fact is necessary); and

Stage 5 - Trial (judge makes final determination as to the admissibility of the records.)

communications to social workers created in G.L. c. 112 sec. 135. See Allen v. Holyoke Hospital, 398 Mass. 372, 376 (1986). While G.L. c. 112, sec. 135 does not establish an absolute privilege against disclosure, "the statute does, in general, prohibit disclosure of information given to social workers in their professional capacity." Commonwealth v. Jones, 404 Mass. at 343. "A judge, therefore, ....should not lightly intrude upon the confidentiality of such records." Id.

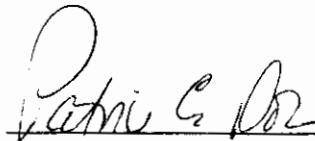
In light of the above, it is the Commonwealth's position that the defendant has not met his burden of specifying the "purpose(s) for which access to his [probation records] is sought." See Uniform Rules on Subpoenas to Court Officials, Rule 3 (2). The public policy concerns of keeping such records private far outweigh the benefit of releasing them to the defendant, especially given that the he was convicted eleven years ago, and his convictions have been reviewed and affirmed by the Supreme Judicial Court. However, in the event that this court finds that the defendant has made an adequate showing, any probation records containing statements of the child victims during interviews are privileged, thereby requiring analysis under Commonwealth v. Bishop, 416 Mass. at 181-183.

Conclusion

The Commonwealth respectfully requests that this court deny the defendant's motion to release portions of the defendant's probation record.

Respectfully Submitted,  
For the Commonwealth,

Jeffrey A. Locke  
District Attorney

A handwritten signature in black ink, appearing to read "Patrice E. Dolan", is written over a horizontal line.

Patrice E. Dolan  
Assistant District Attorney  
360 Washington Street  
Dedham, MA 02027-0309  
781-329-5440 x342

July 2, 1998

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2880*

July 10, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos. 84001-12

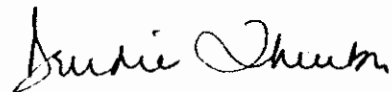
Dear Joe:

Enclosed please find Defendant's Response to the Commonwealth's Opposition. The more I thought about it, I thought that the DA was stonewalling because they know what will happen now that LeFave has been decided. I really can't think of where else we can find the necessary information, except maybe through the DDS reports, and there is probably confidentiality issues involved in those reports.

I started Borenstein's decision. It is interesting and I think that you should seriously think about trying to raise some money for hiring Bruck to review your case. She certainly impressed Borenstein. Think about it and let me know.

Talk to you soon.

Sincerely,



Deirdre Thurber

Enclosure

COMMONWEALTH OF MASSACHUSETTS  
NORFOLK SUPERIOR COURT

NORFOLK, ss.

No.: 84001-12

---

COMMONWEALTH OF MASSACHUSETTS,

v.

JOSEPH DOCKHAM,  
*Defendant*

---

DEFENDANT'S RESPONSE TO COMMONWEALTH'S OPPOSITION

Now comes the defendant in the above-captioned matter in response to the Commonwealth's opposition to Defendant's Motion for the release of a portion of his probation report. The defendant requests that the Court grant his original motion for the release for the release and responds as follows:

The defendant's motion was originally submitted on February 13, 1998, with certified service on the Norfolk County District Attorney's Office (see, exhibit 1). When there had been no response from the Clerk nor opposition from the District Attorney's Office, counsel inquired as to the delay and was informed that it had not been received (see, exhibit 2). Counsel then resubmitted the motion, reserving the District Attorney's Office (see exhibit 3).

Counsel has been gathering the necessary information in anticipation of submitting a Motion for Post-Conviction Relief. Part of the investigation involves research into the area of the interviewing tactics used on the children interviewed. As demonstrated in the recent decision of Judge Borenstein in *Commonwealth v. LeFave*, this is a viable area of appellate argument. The sole repository of some of the necessary information is within the probation report. This information is necessary for the preparation of the Motion for a New Trial. Additionally, in this case Drs. Paradise and Brandt testified for the Commonwealth and their testimony has been held to be the basis for a new trial, *Commonwealth v. Federico*, 40 Mass. App. Ct. 616 (1996). The

statements of DDS investigator, police investigators and foster mother are important to determine what, if any, symptoms consistent with sexual abuse were noted.

WHEREFORE, the defendant respectfully asks that his motion for the release of portions of the probation report be granted.

Dated: July 10, 1998

Joseph Dockham  
By his attorney,

Deirdre Thurber  
BBO # 560251  
19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980



February 14, 1998

Nicholas Barbadoro, Clerk  
Norfolk County Superior Court  
Courthouse  
5650 High Street  
Dedham, MA 02026

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Mr. Barbadoro:

In response to a request I made of you several months ago for copies of statements included in my client's probation report, I received a telephone call from the Norfolk Probation Office. I was informed that they could not release those statements without an order from the Court. Therefore, enclosed please find Defendant's Motion for the Release of Portions of the Probation Report. The trial judge is no longer on the bench, therefore this motion will have to be referred to another judge. Kindly inform me as to the judge that will be ruling on this motion and if there is anything further that must be done to insure a ruling.

I hereby certify that a true copy of the foregoing motion has been served by mailing first class, postage prepaid to the Norfolk County District Attorney's Office, 360 Washington Street, P.O. Box 309, Dedham, MA 02027-0309 on the 14th day of February, 1998.

Thank you for your co-operation.

Sincerely,

Deirdre Thurber

Enclosure

C-9d

NORFOLK, ss. — SUPERIOR COURT.

No. 84001

Comm

vs. Joseph Dockham

Enclosed is a copy of the docket sheet for the above-listed defendant  
we have not received the motion for the release of reports in the  
possession of the Probation Dept.



CLERK

Dedham, June 11 1998

N.B. — In all communications PLEASE USE NUMBER as well as name of case.

F 79A

June 14, 1998

Nicholas Barbadoro, Clerk  
Norfolk County Superior Court  
Court House  
650 High Street  
Dedham, MA 02026

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Mr. Barbadoro:

Pursuant to your correspondence of June 11, 1998,  
enclosed please find a copy of the Defendant's Motion for  
the Release of the Probation Reports.

I hereby certify that I have served another copy of the  
aforementioned motion has been served by mailing first  
class, postage prepaid to the Norfolk County District  
Attorney's Office, 360 Washington Street, P.O. Box 309,  
Dedham, MA 02027-0309 on the 15th day of June, 1998.

Thank you for your co-operation.

Sincerely,

Deirdre Thurber

Enclosure

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

July 13, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

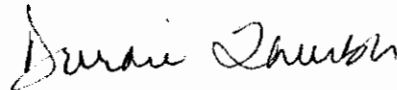
Re: *Commonwealth v. Joseph Dockham*  
Nos. 84001-12

Dear Joe:

Pursuant to our telephone conversation earlier today, enclosed please find a copy of my letter to Attorney Cunningham in an attempt to locate some of the documents concerning the interviewing of Eric. I will try to get in touch with Ms. LeFave's attorney concerning the fees charged by Drs. Bruck and/or Ceci. I will let you know what I hear.

As soon as I receive anything from Mr. Cunningham, I will let you know. Do you want copies? If you have any additional questions, please do not hesitate to contact me, but I suggest that you either try to call in the early evening or write.

Sincerely,



Deirdre Thurber

Enclosure

July 13, 1998

Stephen Cunningham, Esq.  
800 Hingham Street  
Rockland, MA 02370

Re: *Commonwealth v. Joseph Dockham*  
Nos. 84001-12

Dear Mr. Cunningham:

As you hopefully recall, I have been assigned by CPCS to the above-captioned case to investigate the potential of submitting a motion for post-conviction relief. If you have had the opportunity to read the recent LeFave decision, you are aware that there might be a similar issue in Mr. Dockham's case concerning the interviewing of Eric. The only materials that I have relative to the issue of these interviews is a copy of the audio tape of Judith Baker's interview with Eric. I would appreciate it if you would forward to me copies of any documents of interviews with Eric, such as police reports, DSS reports and statements he made to any members of the prosecution team, as well as any recollections that you have on this issue.

If you have any questions, please do not hesitate to contact me. Thank you for your co-operation.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham

**DEIRDRE L. THURBER**

*Attorney*

*10 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2080*

August 4, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Joe:

I just wanted to let you know that I called the Norfolk Clerk's Office to see if any action had yet been taken on the motion for the order for the probation reports. I was told that nothing more has been done since I filed the defendant's response to the Commonwealth's opposition. I did also get a message from Jim Sultan, Cheryl Le Fave's attorney. He did forward your letter and thanked you for it. He also told me that Ceci, Bruck's associate NEVER testifies and Bruck only does so when she is particularly interested in a case, so we may have to look elsewhere. I'll keep you posted with any other news.

Give me a call (or drop me a letter - this time of year, I try to spend time with my daughter before school starts) if you have any questions.

Sincerely,



Deirdre Thurber

P.S. Sultan's address is: Rankin & Sultan  
1 Commercial Wharf North  
Boston, MA 02110



**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

August 24, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: Commonwealth v. Joseph Dockham  
Nos.: 84001-12

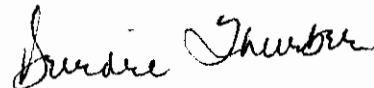
Dear Joe:

Some good news. Enclosed please find a copy of the endorsement on your motion for the witness statements in which the court allowed the motion. I will now forward a copy to the probation department and wait for them to send me the information. As soon as I receive any materials, I will make copies and forward them to you.

I also called Mr. Sultan about Bruck's fees. He is on vacation for another week and will call me when he returns. When I have that information, I will let you know.

Give me a call if you have any questions.

Sincerely,



Deirdre Thurber

Enclosure

0-12b  
10/17/98 Court orders Comm. to respond  
by 7/17/98, and all materials to be  
submitted to the first session for ~~decision~~ decision.  
(Datch-Okara, 11) *at*

COMMONWEALTH OF MASSACHUSETTS  
NORFOLK SUPERIOR COURT

NORFOLK, ss.

No. 84001-12

COMMONWEALTH OF MASSACHUSETTS

v.

JOSEPH DOCKHAM  
Defendant

MOTION TO RELEASE PORTION OF THE PROBATION REPORT

Now comes the defendant, Joseph Dockham, in the above-entitled case and moves that this Honorable Court order that the Probation Office release to the defendant's counsel witness statements contained in the Probation Report relative to the defendant's case.

In support thereof, counsel for the defendant states that she has been assigned by the Committee for Public Counsel Services to investigate the merits of a motion for post-conviction relief for the defendant. Investigation and research has found that there is a developing area of law and psychology concerning the methodology of interviewing child witnesses and the effect on the reliability of their testimony. Counsel needs access to the statements of certain child witnesses believed to be contained within the Probation Report, but has been advised by the Probation Officer that these statements cannot be released without a court order to do so.

WHEREFORE, the defendant respectfully requests that this motion be granted and that the Probation Office be ordered to turn over to counsel the statements previously requested.

Dated: February 13, 1998

June 15, 1998

September 25, 1998

Edward Siudut, Chief Probation Officer  
Norfolk County Probation Office  
20 Eastbrook Road, Suite 101  
Dedham, MA 02026

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Mr. Siudut:

To date, I have had no response to my letter of August 24, 1998 to you concerning the forwarding of the probation records in the above-captioned matter. As you recall, I sent to you a copy of the motion directing the disclosure of those records to me by Judge Dortch-Okara.

Please forward those documents at your earliest convenience or notify me as to the reason and length of any further delay. If you have any questions, please do not hesitate to contact me. Thank you for your co-operation.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham

C-13b

October 23, 1998

Edward Siudut, Chief Probation Officer  
Norfolk County Probation Office  
20 Eastbrook Road  
Dedham, MA 02026

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Mr. Siudut:

To date, I have had no response to my inquiry of October 8 concerning your compliance with the Court order to turn over to me copies of the reports of all the interviews of the all the children questioned in the above-captioned matter. Please advise me as to when I might expect to receive any remaining documents.

Thank you for your attention.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02380  
(508) 224-2880*

October 26, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Joe:

I received a telephone call from the Chief of Probation today in response to my recent letter to him (a copy of which I forwarded to you). He tells me that they sent me everything that they had in their files relative to any statements made by any children. He also explained that the DA's office does not always provide them with all the information that they have. Consequently, enclosed please find a copy of another motion that I am filing to get the DA to turn over any statements (particularly those to law enforcement and/or social services) that they may have. I don't expect them to co-operate voluntarily, so I am afraid that this will be necessary. In light of the previous decision, I do not anticipate that there will be any problem with this motion, however, the judge that granted the first motion has been "promoted" and is now the administrative judge of the trial courts. So, one can never predict what a new judge will do - all we can do is try.

If you have any questions, please do not hesitate to contact me. I'll keep you informed of any progress.

Sincerely,



Deirdre Thurber

Enclosure

COMMONWEALTH OF MASSACHUSETTS  
NORFOLK SUPERIOR COURT

NORFOLK, ss.

Nos.: 84001-12

---

COMMONWEALTH OF MASSACHUSETTS,

v.

JOSEPH DOCKHAM,  
*Defendant*

---

MOTION FOR THE RELEASE OF WITNESS STATEMENTS

Now comes the defendant, Joseph Dockham, in the above-captioned matter and moves that this Honorable Court order that the District Attorney's Office release to the defendant's counsel copies of any and all statements made by the complainant and any other child interviewed during their preparation of this case.

In support thereof, counsel for the defendant submits the attached affidavit.

WHEREFORE, the defendant respectfully requests that this motion be granted and that the District Attorney be ordered to turn over to counsel the statements requested.

Dated: October 26, 1998

By the defendant,  
Joseph Dockham  
By his attorney,

Deirdre Thurber  
BBO # 560251  
19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980



COMMONWEALTH OF MASSACHUSETTS  
NORFOLK SUPERIOR COURT

NORFOLK, ss.

Nos.: 84001-12

---

COMMONWEALTH OF MASSACHUSETTS,

v.

JOSEPH DOCKHAM,  
*Defendant*

---

AFFIDAVIT OF COUNSEL

I, Deirdre Thurber, do depose and state:

1. I was assigned to investigate the merits of a Motion for a New Trial in the above-captioned matter by the Committee for Public Counsel Services.

2. This case involves the sexual abuse of a three year old by the defendant absent any additional witnesses or forensic evidence.

3. Since Mr. Dockham's conviction, there has been considerable investigation by mental health experts as to the reliability of the testimony of such witnesses and Judge Borenstein has issued an opinion in *Commonwealth v. LeFave* that has great relevance in this matter concerning the methods used to interview the child witnesses.

4. For counsel to be able to competently investigate this issue, she must be able to review all the interviews of the child witness done by all sources, including, but not limited to law enforcement, social services, foster parents, medical personnel, and any employees of the District Attorney.

5. Counsel made a similar motion for copies of such statements in the possession of the Probation Department, which was granted by Judge Dortch-Okara on August 4, 1998.

6. The Probation Department forwarded copies of the transcript of a tape recording of the child witness taken by one of the foster mothers and two reports of the Norfolk County Sexual Assault Unit.

7. The Probation Department has indicated that the above comprise all such statements in their possession and that it is common that they are not provided with copies of all statements within the possession of the District Attorney, such as the reports of all the law enforcement agencies involved, social services or the employees of the District Attorney.

8. Since the only source of this information is the District Attorney, counsel is requesting that all such statements be forwarded, consistent with the requirements of discovery.

SIGNED UNDER THE PAINS AND PENALTIES OF PERJURY on this 26th day of October, 1998.

---

Deirdre Thurber

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2880*

November 12, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

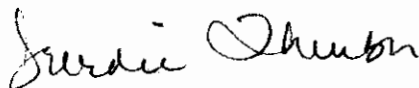
Dear Joe:

I received a message the other day from the Clerk concerning the motion that I submitted for all the witness statements held by the DA. Apparently, that motion has been to Judge Volterra (Judge Dortch-Okara has been promoted) and he wants to hold a hearing on the motion. So, I called the DA's office and left an appropriate message, to which there was no reply. Consequently, I called again today and got to talk to a live person, who will contact the DA responsible for your case and will have her call me. When we come to an agreement as to a date, I will call the Clerk to set up the hearing.

I doubt that they will have you in because it is just legal argument on the motion, but I will ask if you are interested in being there. Let me know and I will find out from the Clerk if it is a possibility.

Nothing else is new. I'll keep you informed.

Sincerely,



Deirdre Thurber

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

November 17, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

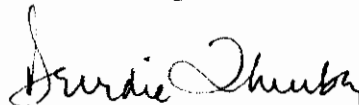
Dear Joe:

Enclosed please find a copy of a letter that I sent to the Norfolk County DA handling the motion for the reports of interviews. She asked for a date after Thanksgiving, which leads me to believe that she is preparing a written opposition. As you can see from the letter, I asked that she get any such opposition to me before the argument (it wouldn't be the first time that some ADA tried to hand me opposition papers as we entered the courtroom). I will, of course, forward you copies of any such opposition.

I have to contact the Clerk with the agreed upon date. The only problem that might arise is if Judge Volterra has been assigned to a different county by December. The additional problem for me is that my daughter is performing in the Nutcracker in Boston starting December 5, so time is extremely limited. If there is any problem or rescheduling, I will let you know.

In the interim, if you have any questions, please do not hesitate to contact me. Keep your fingers crossed.

Sincerely,



Deirdre Thurber

Enclosure

November 17, 1998

Patrice Dolan, Esq.  
Norfolk County District Attorney's Office  
P.O. Box 309  
360 Washington Street  
Dedham, MA 02027-0309

Re: *Commonwealth v. Joseph Dockham*  
Nos. 84001-12

Dear Ms. Dolan:

In furtherance of our telephone conversation of November 16, 1998, the date of December 2 is agreeable. Since you asked for some time after Thanksgiving, I am assuming that you intend to submit a written opposition. If this is the case, please do me the courtesy of providing a copy to me sufficiently in advance of December 2 to allow me to respond.

If the Clerk indicates that there is some difficulty with the date to which we have agreed, I will let you know. If you have any questions, please do not hesitate to contact me.

Thank you for your co-operation.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

November 25, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

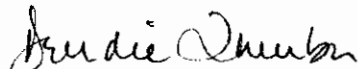
Dear Joe:

I received your letter of November 21, 1998. I am enclosing a letter that I forwarded to the clerk. I called him and left the information and asked that he confirm receipt, but he has not yet done so. As you see, I have requested your presence and I will let you know what I receive as a response.

I do not think it is a good idea for you to make a statement to the judge. This "hearing" is only for the limited purpose of deciding whether the Commonwealth should be ordered to turn over to us the interviews of Eric. The Commonwealth is arguing that this is similar to the rape cases where victims have gone for psychological testing and the defense wants those records. Frankly, I do not see the analogy and hope that Judge Volterra follows the lead of Judge Dortch-Okara and orders that they turn this information over to us. As you indicated in your letter, this is certainly not the time to alienate the judge. This is why I do not think that this is the appropriate time to make any statements.

As always, I will let you know what is going on and what response I receive concerning the argument on the motion. If you have any questions, please do not hesitate to contact me. Have a happy Thanksgiving.

Sincerely,



Deirdre Thurber

Enclosure

November 25, 1998

James McDermott, Assistant Clerk  
Norfolk County Superior Court  
650 High Street  
Dedham, MA 02026

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Mr. McDermott:

I left a telephone message for you concerning the above-captioned case and the agreement between the assistant district attorney and myself as to a good date to appear before Judge Volterra for oral argument on the pending motion. In the event that you did not receive that message, we have agreed on December 2, if that is agreeable with the Court. As I indicated, I have a commitment in Plymouth that will delay my departure from here until 9 AM, therefore, I would appreciate it if the case could be held until approximately 10:15. I would also like to request that my client be habed from Southeastern Correctional Center to attend the hearing.

Please advise me as to whether these arrangements are suitable and if my client will be present in court. Thank you for your co-operation.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham



**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

December 2, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Joe:

Let me report as to what has happened over the last couple of days. I never received any verification from the Clerk as to today for the hearing, nor did I receive any opposition from the DA. So, yesterday, I talked to the Clerk who alleges that he did not receive the message that I left on his voice mail nor had he received my letter. He also had not heard anything from the prosecution. I then tried (in vain) to contact the DA all day. When I got back to the office that night, there was a message on my answering machine that the DA was prepared to go ahead today.

I got to Court around 9:45 and spoke with the DA (now it is Jean Marie Carroll, not Patrice Dolan) who handed me an opposition that she had not even read (drafted by another - copy enclosed). I explained what I was interested in obtaining (the statements of Eric and any reports prepared by anyone who interviewed him that might reflect the interview process). The judge finally took the bench at 11 and listened to argument. I gave him a copy of Borenstein's decision in Amirault and a copy of the SJC decision in your appeal. The DA basically argued that we should wait until the SJC decides the Amirault appeal (being brought by the Middlesex DA), because if the SJC decides that Bruck's information does not constitute newly discovered evidence then she need not "waste" her time by trying to locate the information requested. I indicated to the judge that we were still entitled to the information regardless of whether we can ultimately use it in a Rule 30 motion. He is going to review the materials that I gave him and take the matter under advisement.

C-14j

Joseph Dockham  
December 2, 1998  
Page 2

Then, upon my return and reading of this week's Lawyer's Weekly, there was this Superior Court decision in which the judge struck part of the DA's evidence based upon the use of anatomically correct dolls since such interview techniques produce unreliable results. (Copy enclosed.) That decision indicates that the defense bar is starting to use the information in Bruck's affidavit to eliminate unreliable evidence from reaching the jury and the judiciary is adopting the argument. It is not exactly on point (since it does not address the issue of whether this kind of information constitutes newly discovered evidence), so I will not send a copy to the judge, but I am sure that, as a thorough judge, he reads the Lawyer's Weekly and will see it himself.

As you know, I cannot predict what the judge will do, but he seemed to be sympathetic to your cause when he responded to the DA's request that he delay his decision until after the SJC acts on Amirault ~~by asking her if one day in jail for something a defendant did not do wasn't one day too many.~~ I am guardedly optimistic and will let you know as soon as I hear anything. (Tried to get you habed in, but the Clerk claimed he did not have sufficient time to do so. I thought that it was more important that we get the motion moving than we wait for your appearance. Besides, there was nothing for you to add - except the pleasure of your company, of course.)

As always, if you have any questions, please do not hesitate to contact me.

Sincerely,



Deirdre Thurber

Enclosures

COMMONWEALTH OF MASSACHUSETTS

Norfolk, SS.

Superior Court  
Criminal Division  
No. 84001-12

\_\_\_\_\_  
Commonwealth of Massachusetts )  
 )  
v. )  
 )  
Joseph Dockham )  
\_\_\_\_\_ )

Commonwealth's Opposition to the Defendant's Motion to  
Release Witness Statements in the Possession of the District  
Attorney's Office

Now comes the Commonwealth and respectfully request this Honorable Court to deny the defendant's motion to release statements made by witnesses in the above captioned case. As reasons therefor, the Commonwealth states as follows:

Statement of the Case

In late May and early June of 1987, the defendant and his girlfriend, Laura Tufts, were tried together for the sexual abuse of a four year old boy and an eighteen month old girl.<sup>1</sup> The defendant is the father of the baby girl, and the codefendant is the mother of both children.

<sup>1</sup> The codefendant's appeal is reported in Commonwealth v. Tufts, 405 Mass. 610 (1989).

The young male victim was five and one half years old at the time of trial. Prior to his testifying, the trial judge, Carey, J., conducted a voir dire of the young witness on the issue of competency to testify. The judge asked the child a series of questions and based on the child's responses, found the boy to be a competent witness. Eric was placed on the stand in an open courtroom and in front of both defendants. He was sworn as a witness and asked preliminary questions which he answered with no problem. The Assistant District Attorney then began to ask the child questions about the incidents alleged in the indictment. He answered that he used to live with the defendants, that some things happened in the defendants' bedroom that he did not like, and that he and his younger sister had been touched. However, he was unable to answer any further questions. He became visibly upset and overwhelmed - kicking and moving around in his seat, stuffing his shirt into his mouth, and turning around in his seat and facing the wall.

The court took several recesses to allow the child regain his composure. During one of those recesses, the child and all other interested parties entered the judge's lobby. The prosecutor asked the child questions regarding the alleged incidents, all of which he answered directly. However, when the

child returned to the courtroom, he exhibited the same behaviors that he had before, and was unable to answer the same questions that had been posed to him moments prior in the judge's chambers. In light of this, on June 1, 1987, the Commonwealth filed a motion to videotape the child's testimony pursuant to M.G.L. c. 278 sec. 16D.<sup>2</sup> The Commonwealth's motion was allowed.

On June 11, 1987, the defendant was convicted of several indictments charging rape, assault with intent to rape, child pornography, and indecent assault and battery of two minor children. On August 27, 1987, the trial judge sentenced the defendant to not less than 20 years and not more than 25 years at Cedar Junction. In October, 1988, the defendant filed a motion for a new trial which was denied, without hearing by the trial judge. The Supreme Judicial Court affirmed the defendant's convictions and the denial of his motion for a new trial in Commonwealth v. Dockham, 405 Mass. 618 (1989).

---

<sup>2</sup> M.G.L. c. 278 sec. 16D provides that the court may order that the testimony of a child witness in a sexual assault case be taken by suitable alternative procedures if the court finds by a preponderance of the evidence that testifying in the traditional manner will cause emotional or psychological trauma to the child witness.

Statement of Facts

On June 16, 1986, a social worker from the Department of Social Services [DSS] removed two small children from the defendant's home, after the four year old boy made allegations of physical and sexual abuse by his mother, and the defendant, his mother's live in boyfriend.<sup>3</sup> On June 27, 1986, DSS placed the small children in the care of a foster family, where they remained until the time of trial.

Through the videotaped testimony of the young boy, the jury heard evidence that the defendant tried to put his penis in the boy's rectum and that there was some penetration. According to the young boy, the defendant sodomized the child and touched the child's buttocks and penis with his hand. He also testified that "stuff came out." The child further testified that the defendant touched the young girl's vagina with his mouth and that the codefendant, the boy's mother, also touched his penis and the girl's vagina with her mouth and fingers. The testimony revealed that the defendant told the boy to touch his mother's and sister's vaginas with his mouth. The jury also heard evidence that the defendant bit the young boy on the buttocks, that the

---

<sup>3</sup> The Commonwealth relies in part on the statement of facts set forth in Commonwealth v. Dockham, 405 Mass. 618, 619-620 (1989).



defendant hit the child with belts, and that the defendants took pictures when the sexual abuse occurred.

#### Argument

Now, by motion, the defendant asks this court to order the release of witness statements made by the complainant and any other child interviewed during the preparation of the prosecution's case. In support of his motion, the defendant relies on Judge Isaac Borenstein's decision in Commonwealth v. LeFave, Crim Act. No. 85-63, 85-64, 85-66, 85-67, 85-2678, 85-2679, and 85-2680. The defendant claims that Judge Borenstein's decision has great relevance in the instant matter concerning the methods used to interview the child witnesses. As defense counsel represents in the supporting affidavit, the defendant seeks the material in the possession of the office of the District Attorney so as to investigate the merits of a second motion for a new trial.

First, whether the suggestive interviewing techniques of young sexual assault victims constitutes "newly discovered evidence" necessitating a new trial is a matter currently before the Supreme Judicial Court, No. SJC-07529. In light of this, it is the Commonwealth's position that the instant motion is



premature. While the defendant claims that the manner in which the young victims were questioned might support a new trial motion, the Commonwealth respectfully requests that this Court reserve ruling on this motion until the aforementioned issue has been resolved by the Supreme Judicial Court.

Second, the defendant seeks access to any interviews of child witnesses done by the Department of Social Services. When interviewed by the social worker, the victim described the physical and sexual abuse that he and his younger sister had sustained at the hands of the defendant. See Commonwealth v. Dockham, 405 Mass. at 620 ("A social worker from [DSS] testified at trial that she had removed the two children from the defendants' home... after the four year old boy had made allegations of physical and sexual abuse by the defendant and the codefendant."). Subsequent to the removal from the home, a formal investigation was conducted, during which the child was interviewed by DSS. The conversation between the child and the social worker was later admitted at trial as fresh complaint testimony. Id. at 621. It is the Commonwealth's position, therefore, that any information which might pertain to the DSS investigation is governed by the statutory privilege for communications to social workers created in G.L. c. 112 sec. 135.

See Allen v. Holyoke Hospital, 398 Mass. 372, 376 (1986). While G.L. c. 112, sec. 135 does not establish an absolute privilege against disclosure, "the statute does, in general, prohibit disclosure of information given to social workers in their professional capacity." Commonwealth v. Jones, 404 Mass. at 343. "A judge, therefore, ....should not lightly intrude upon the confidentiality of such records." Id.

Lastly, any notes or summaries of interviews with the young victims kept by the members of the District Attorney's Office or persons acting on behalf of the District Attorney's Office constitute work product and are, therefore, privileged. Accordingly, the defendant should not be allowed access to any such materials.

#### Conclusion

For the foregoing reasons, the Commonwealth respectfully requests that the defendant's motion be denied.

Respectfully Submitted,  
For the Commonwealth,

---

Jeanmarie Carroll  
Assistant District Attorney

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02380  
(508) 224-2980*

December 4, 1998

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Joe:

Enclosed please find a copy of Judge Volterra's decision on our motion for the statements. As you can see, we are half way there. He has ordered that the DA compile the requested statements and turn them over to him for review. If they do not contain privileged matter, then I would expect him to turn them over to us. At least there will not be the delay in waiting for the SJC to rule on the Amirault appeal.

As always, I will let you know of any developments just as soon as I know. Good news, huh? Nice for a change. If you have any questions, please do not hesitate to contact me.

Sincerely,



Deirdre Thurber

Enclosure

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT  
CRIMINAL ACTION  
NO. 84001-12

COMMONWEALTH OF MASSACHUSETTS

vs.

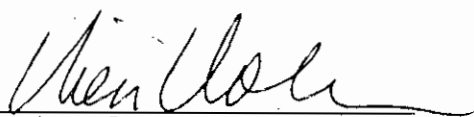
JOSEPH DOCKHAM,

ORDER ON DEFENDANT'S MOTION TO PRODUCE STATEMENTS

On December 2, 1998, this matter was before the court on the defendant's motion for the release of witness statements. The defendant seeks release of any and all statements made by the complainant and any other child interviewed during the preparation of this case. It is hereby ORDERED that the Commonwealth shall deliver to this court all such records along with a written statement specifying which records are claimed to be subject to privilege, setting forth the grounds for the claimed privilege.

The records should be contained in a sealed envelope within another envelope and delivered to Norfolk Superior Court, Criminal Clerk's Office, 650 High Street, Dedham, Massachusetts. Please attach to the outside of the sealed envelope a cover letter which clearly states any privileges you believe protects the enclosed records from disclosure. Please mark on the outside of the sealed

envelope the word "IMPOUNDED" in large letters to ensure that the envelope will not be opened inadvertently. The materials will be impounded by the Clerk, upon receipt, subject to further order of the Court. This court retains jurisdiction over this discovery issue.

  
Vieri Volterra  
Justice of the Superior Court

DATED: December 2, 1998

January 5, 1999

Jean Marie Carroll, Assistant District Attorney  
Norfolk County District Attorney's Office  
P.O. Box 309  
360 Washington Street  
Dedham, MA 02027-0309

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Ms. Carroll:

I am writing for an update on your progress complying with the decision of Judge Volterra in the above-captioned matter as to the providing to him of copies of the interviews of the witness. I am trying to keep updated in part because of the transfer of Judge Volterra to Bristol County and the change of administration within your office. I would like to avoid any additional delay in investigating this issue.

If you have any questions, please do not hesitate to contact me. Thank you for your co-operation.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road*

*Plymouth, MA 02380*

*(508) 224-2980*

January 11, 1999

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

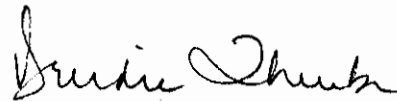
Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Joe:

I just wanted to update you as to what is happening with your case. I heard today from Assistant District Attorney Carroll in response to my letter. She is staying with the Norfolk County DA, so at least we will always be dealing with her. She is still trying to locate the file, but has had no success to date. She also indicated that she does not expect to find anything but the interviews with law enforcement. She is sending me a copy of the videotape of the testimony at trial of Eric.

As soon as I receive any further information, I will be sure to let you know. As always, if you have any questions, please do not hesitate to contact me.

Sincerely,



Deirdre Thurber



**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02380  
(508) 224-2980*

January 21, 1999

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Joe:

I just wanted to let you know that I received your letter of January 16. I, too, am not surprized at the difficulty that the prosecution is having in retrieving the file - she said as much to me when I met her at the oral argument. I certainly will keep in mind making a motion for the DSS reports. I envision quite a battle if we do that with an army of different attorneys. I was hoping to avoid that by seeing if the prosecution had those records and turned them over to the judge. He would then decide if we could have them without involving DSS lawyers. Let's wait to see what we get this way, and then plan strategy from there.

As soon as I know anything, I will be sure to let you know. In the interim, if you have any questions, please do not hesitate to contact me.

Sincerely,



Deirdre Thurber

February 5, 1999

Jean Marie Carroll, Assistant District Attorney  
Norfolk County District Attorney's Office  
360 Washington Street  
P.O. Box 309  
Dedham, MA 02027-0309

Re: *Commonwealth v. Joseph Dockham*  
Nos.: 84001-12

Dear Ms. Carroll:

We spoke on the telephone on January 11, 1999 concerning the above-captioned matter and the decision of Judge Volterra for all the requested materials to be forwarded to him for an in camera inspection. At that time, you indicated that there was a videotape of the complainant's testimony that you would send to me. To date, I have not received that videotape. Please advise me as to an anticipated date of receipt and the status of your attempts to locate the materials requested.

Thank you for your continuing co-operation in this matter.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

March 10, 1999

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*

Dear Joe:

You won't believe the timing. I just composed letters last night for printing and mailing this morning to the DA, you and Judge Volterra concerning the documents that are supposed to be turned over to Judge Volterra. But, on my answering machine is a message from a Lieutenant Detective Brooks from the State Police that he has a package of materials for me from the Norfolk County DA - please page him. I did page him earlier, but he had yet to return the page, so I will hold off on sending the other letters until I hear from him. I know of no other case that I am handling from Norfolk that involves papers from the DA, so he must be referring to your case.

As soon as I receive anything, I will make copies and forward them to you. If you have any questions, please do not hesitate to contact me. It would be better to drop me a note, because I am not taking calls while I try to get two Rule 30 motions and an appellate brief done.

Sincerely,



Deirdre Thurber

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road  
Plymouth, MA 02360  
(508) 224-2980*

March 11, 1999

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: *Commonwealth v. Joseph Dockham*

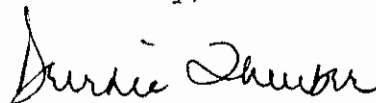
Dear Joe:

What an operation! That Lieutenant Det. never called me back, but I got a message from one of the administrative assistants from the Norfolk County District Attorney's Office. Apparently, that Liet. Det. tried twice to deliver a packet of information to my office, but no one was there, so he left the materials in my garage, without any kind of note and tucked away in a spot that I would never notice them. Thank goodness that she called to let me know that they had been left, and I finally found them.

To make matters more frustrating, it appears from the cover letter of Jeanmarie Carroll that all these materials had been given to Cunningham. Why he didn't provide them to us when we first made inquiry of him is beyond me - it certainly would have saved a lot of time. Anyway, enclosed please find copies of all the materials that they sent, with the exception of the videotapes of Eric's trial testimony. Do you have any idea if these constitute all the statements? If there is something more, I'll have to make a request of the district attorney, so I would like to be as specific as possible. Let me know.

If you have any comments or questions, please drop me a line. Maybe we are finally on our way (?).

Sincerely,



Deirdre Thurber

Enclosures

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road*

*Plymouth, MA 02360*

*(508) 224-2980*

January 11, 2000

Joseph Dockham  
Southeastern Correctional Center  
12 Administration Road  
Bridgewater, MA 02324

Re: recent correspondence

Dear Joe:

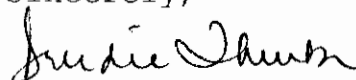
I am in receipt of your letter of December 31. Enclosed please find a copy of the letter to the DA for the Grand jury minutes. There is no listing in the Boston directory for the Judge Baker Clinic. Is there another name for it or do you know the address? I am also enclosing copies of the statements that I received from the DA pursuant to our motion. If these are not the statements that you wanted, please let me know. The call that I got was from the Harvard Clinic (which has yet to be returned). From the message that was left, I assume that it was in response to some correspondence that you had sent to them.

I am familiar with the Peters case, but, if my memory is correct, I don't think that it has much relevance to your situation. Granted, it involves the sexual abuse of a child by the boyfriend of the mother (I think that is the relationship), but the courts examined the fresh complaint instruction and found that it was not only erroneous, but also created a substantial risk of a miscarriage of justice. I will look at it again, but I don't think it is of any help.

There is new legislation that allows the DOC to keep people beyond their commitment, but they have to hold a hearing where the defendant is represented by counsel and they have to prove that the defendant creates a danger to the community sexually.

I will be trying to contact both the Burtons and the Harvard Clinic people once my office schedule settles back into a routine. As always, I will keep you informed of all developments.

Sincerely,



Deirdre Thurber

Enclosures

January 11, 2000

Jean Marie Carroll, Assistant District Attorney  
Norfolk County District Attorney's Office  
P.O. Box 309  
360 Washington Street  
Dedham, MA 02027-0309

Re: Commonwealth v. Joseph Dockham  
Nos.: 84001-12

Dear Ms. Carroll:

As you recall, we had prior dealings in the above-captioned matter dealing with the statements of witnesses. A review of my file indicates that I do not have a copy of the Grand Jury testimony. I would greatly appreciate it if you could forward to me a copy.

If you have any questions, please do not hesitate to contact me. Thank you for your co-operation.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham

March 2, 2000

Jean Marie Carroll, Assistant District Attorney  
Norfolk County District Attorney's Office  
P.O. Box 309  
360 Washington Street  
Dedham, MA 02027-0309

Re: Commonwealth v. Joseph Dockham  
Nos.: 84001-12

Dear Ms. Carroll:

I wrote to you concerning the Grand Jury transcripts in the above-captioned case on January 11. To date, I have not received a response to that inquiry.

If there are any questions, or if I can be of any assistance, please do not hesitate to contact me. Thank you for your co-operation.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham



April 26, 2000

Jean Marie Carroll, Assistant District Attorney  
Norfolk County District Attorney's Office  
P.O. Box 309  
360 Washington Street  
Dedham, MA 02027-0309

Re: Commonwealth v. Joseph Dockham  
Nos.: 84001-12

Dear Ms. Carroll:

I have written to you on several previous occasions in an attempt to obtain the Grand Jury transcripts in the above-captioned case. To date, I have not received a response to that inquiry. If there is some difficulty in locating these, please so advise me, so that I can apprise my client.

If there are any questions, or if I can be of any assistance, please do not hesitate to contact me. Thank you for your co-operation.

Sincerely,

Deirdre Thurber

cc: Joseph Dockham

**DEIRDRE L. THURBER**

*Attorney*  
*19 Bloody Pond Road*  
*Plymouth, MA 02360*  
*(508) 224-2980*

May 11, 2000

Joseph Dockham  
Bay State Correctional Center  
P.O. Box 73  
Norfolk, MA 02056

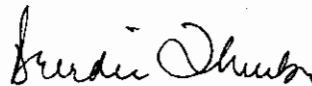
Re: Grand Jury transcript

Dear Joe:

Enclosed please find a copy of the response that I finally received from the Norfolk County DA concerning our repeated requests for the Grand Jury minutes. Needless to say, if they ever do forward them to me, I will send a copy on to you.

Please keep me updated as to the other matters, in particular Eric. If you have any other questions, please do not hesitate to contact me.

Sincerely,



Deirdre Thurber

Enclosure



The Commonwealth of Massachusetts

OFFICE OF THE DISTRICT ATTORNEY  
FOR THE NORFOLK DISTRICT

WILLIAM R. KEATING  
DISTRICT ATTORNEY

45 SHAWMUT ROAD  
CANTON, MA 02021  
(781) 830-4800  
FAX (781) 830-4801

May 11, 2000

Deirdre L. Thurber, Esq.  
19 Bloody Pond Road  
Plymouth, MA 02360

Re: Commonwealth v. Joseph Dockham  
Nos. 84001-12

Dear Ms. Thurber:

This office is currently unable to locate the requested information. I will notify you if and when we locate the transcripts you are seeking.

Sincerely,

A handwritten signature in black ink, appearing to read "Jeanmarie Carroll".

Jeanmarie Carroll  
Assistant District Attorney  
Chief, Sexual Assault and  
Domestic Violence Unit

JC/cam

let-jm/8

C-19f

**DEIRDRE L. THURBER**

*Attorney*

*19 Bloody Pond Road*

*Plymouth, MA 02380*

*(508) 224-2980*

March 14, 2001

Joseph Dockham  
Bay State Correctional Center Mod. 1-127A  
P.O. Box 73  
Norfolk, MA 02056

Re: Commonwealth v. Joseph Dockham

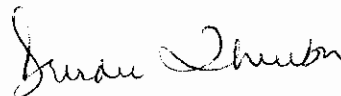
Dear Joe:

First, my apologies for being out of touch for so long. There are many reasons for the lack of communication, most of which have to do with health reasons. I hope all of those are finally resolved and I can complete the Rule 30, which I started late last fall.

I will make every attempt to get a rough draft to you by the end of the month, with the intent of filing the completed Rule 30 by the end of April. That hopefully will give you enough time to make any recommendations to me before the final draft is completed. However, since I will be out of state from April 14 until April 20, if you have many suggestions, it may delay filing until mid-May. That is not at all to discourage you from making the comments on the Rule 30, but just to give you a realistic time frame.

I hope that all is well with you. If you have any questions, please do not hesitate to contact me, but please do so before 2 PM.

Sincerely,



Deirdre Thurber

cc: Don Bronstein, Esq.

**Supreme Judicial Court for the Commonwealth of Massachusetts**  
One Beacon Street, Third Floor, Boston, Massachusetts 02108  
(617) 557-1020

Deirdre Lee Thurber, Esquire  
19 Bloody Pond Road  
Plymouth, MA 02360

RE: Docket No. FAR-14180

**COMMONWEALTH**  
**vs.**  
**JOSEPH DOCKHAM**

Norfolk Superior Court No. NOCR1986-84001  
A.C. No. 2003-P-0530

**NOTICE OF DENIAL OF F.A.R. APPLICATION**

Please take note that on 06/30/04, the above-captioned Application for Further Appellate Review was denied.  
(Cowin, J., recused)

Susan Mellen, Clerk

Dated: June 30, 2004

To: Robert C. Cosgrove, A.D.A.  
Deirdre Lee Thurber, Esquire

Commonwealth of Massachusetts  
NORFOLK SUPERIOR COURT  
Case Summary  
Criminal Docket

Commonwealth v Dockham, Joseph

---

Details for Docket: NOCR1986-84001

Case Information

Docket Number: NOCR1986-84001 Caption: Commonwealth v Dockham, Joseph  
Entry Date: 12/10/1986 Case Status: 1 - CtRm - Main  
Status Date: 05/11/2004 Session: Disposed (appeal denied)  
Lead Case: NA Deadline Status:  
Trial Deadline: Jury Trial: NO

---

Parties Involved

---

2 Parties Involved in Docket: NOCR1986-84001

Party Involved: Role: Defendant  
Last Name: Dockham First Name: Joseph  
Address: Address:  
City: Weymouth State:  
Zip Code: Zip Ext:  
Telephone:

Party Involved: Role: Plaintiff  
Last Name: Commonwealth First Name:  
Address: Address:  
City: State:  
Zip Code: Zip Ext:  
Telephone:

---

Attorneys Involved

---

1 Attorneys Involved for Docket: NOCR1986-84001

Attorney Involved: Firm Name:  
Last Name: Thurber First Name: Deirdre L  
Address: 19 Bloody Pond Road Address:  
City: Plymouth State: MA  
Zip Code: 02360 Zip Ext:  
Telephone: 508-224-2980 Tel Ext:  
Facsimile: 508-224-2980 Representing: Dockham, Joseph (Defendant)

---

Calendar Events

---

No Calendar Events found for Docket: NOCR1986-84001.

There are currently no calendar events associated with this case.

---

Full Docket Entries

---

224 Docket Entries for Docket: NOCR1986-84001

Entry Date:	Paper No:	Docket Entry:
12/30/1986	1	Indictment returned
12/30/1986		RE Offense 1:Plea of not guilty
12/30/1986		RE Offense 2:Plea of not guilty
12/30/1986		RE Offense 3:Plea of not guilty
12/30/1986		RE Offense 4:Plea of not guilty
12/30/1986		RE Offense 5:Plea of not guilty
12/30/1986		RE Offense 6:Plea of not guilty
12/30/1986		RE Offense 7:Plea of not guilty
12/30/1986		RE Offense 8:Plea of not guilty



12/30/1986 RE Offense 9:Plea of not guilty  
 12/30/1986 RE Offense 10:Plea of not guilty  
 12/30/1986 RE Offense 11:Plea of not guilty  
 12/30/1986 RE Offense 12:Plea of not guilty  
 12/30/1986 RE Offense 13:Plea of not guilty  
 12/30/1986 Deft arraigned before Court - Plea no guilty bail personal -  
 12/30/1986 continued to 1/14/87 for conference - Special conditions of bail -  
 12/30/1986 pretrial probation conditions - to telephone probation department  
 12/30/1986 twice a week - to report personally once a week (McHuch, J)  
 12/30/1986 2 Appointment of Counsel Stephen T. Cunningham, Esq.  
 12/30/1986 RE Offense 14:Plea of not guilty  
 01/14/1987 Continued until February 20, 1987- motions to be filed Feb. 13, 1987  
 01/14/1987 (Banks, J)  
 01/14/1987 3 Pre-trial conference report filed  
 02/20/1987 3 Motion by Deft: for pretrial discovery pursuant to Mass. Rules of  
 02/20/1987 3 Criminal Procedure numbered 13-14 - Numbers 1,2, & 3 are allowed and  
 02/20/1987 3 information provided at least 30 days prior to trial - No. 4 & 5,  
 02/20/1987 3 dealing with privileged information are allowed and ordered furnished  
 02/20/1987 3 in accordance with the motion within 20 days - No. 6 is reserved for  
 02/20/1987 3 the trial judge (Prince, J) notice sent  
 02/20/1987 4 Motion in limine filed and reserved for trial judge  
 02/20/1987 5 Motion for bill of particulars - motion is allowed - responses to be  
 02/20/1987 5 provided within 20 days (Prince, J) notice sent  
 02/20/1987 Continued until March 12, 1987 - for status (Prince, J)  
 03/12/1987 Continued until March 21, 1987 for status (Meyer, J)  
 03/20/1987 6 Bill of particulars  
 03/20/1987 7 Motion for pre-trial discovery pursuant to Mass. Rules of Criminal  
 03/20/1987 7 Procedure Nos. 13 and 14  
 03/31/1987 Motions to be filed by 4/10/87 -Continued until April 24, 1987 for  
 03/31/1987 hearings - trial date 6/1/87 (Meyer, J)  
 04/10/1987 8 Commonwealth files Memorandum in opposition to defendant's motion for  
 04/10/1987 8 physical examination of alleged victim  
 04/10/1987 40 Rescript received from Appeals Court, SJC - judgments affirmed -  
 04/10/1987 40 notice sent to District Attorney and Attorney  
 04/15/1987 8 Motion for physical examination of alleged victim - 4/24/87 denied  
 04/15/1987 8 objection noted (Hurd, J)  
 04/15/1987 9 Certificate of service  
 06/01/1987 10 Commonwealth files memorandum regarding witness competency received  
 06/01/1987 10 and filed  
 06/01/1987 11 Commonwealth files memorandum of law in support of the motion to  
 06/01/1987 11 videotape the testimony of child witness received and filed  
 06/03/1987 12 Motion to videotape testimony of a child witness allowed (Carey, J)  
 06/03/1987 13 Commonwealth files memorandum regarding testimony of Dr. Jan Paradise

06/03/1987 13 as an expert  
 06/03/1987 14 Commonwealth files memorandum of law in support of motion in limine  
 06/03/1987 15 Commonwealth files memorandum of law in support of admissibility of  
 06/03/1987 15 testimony of Dr. Renee Brant as an expert  
 06/03/1987 15 FINDINGS of FACT RULINGS of LAW: re: allowance of motion by  
 06/03/1987 15 Commonwealth to videotape testimony of child witness (Carey, J)  
 06/11/1987 RE Offense 1:Guilty verdict  
 06/11/1987 RE Offense 2:Guilty verdict  
 06/11/1987 RE Offense 3:Not guilty finding  
 06/11/1987 RE Offense 4:Guilty verdict  
 06/11/1987 RE Offense 5:Guilty verdict  
 06/11/1987 RE Offense 6:Guilty verdict  
 06/11/1987 RE Offense 7:Guilty verdict  
 06/11/1987 RE Offense 8:Not guilty finding  
 06/11/1987 RE Offense 9:Guilty verdict  
 06/11/1987 RE Offense 10:Not guilty finding  
 06/11/1987 RE Offense 11:Guilty verdict  
 06/11/1987 RE Offense 12:Guilty verdict  
 06/11/1987 RE Offense 13:Not guilty verdict  
 06/11/1987 RE Offense 14:Not guilty verdict  
 06/11/1987 Verdict of guilty - Re: Offenses 1,2,4,5,6,7,8,11,12 - remand  
 06/11/1987 without bail pending sentencing 6/25/87 court orders screening  
 06/11/1987 examine Chapter 123A Sec 4 (Carey, J)  
 06/15/1987 16 Habeas corpus for Deft at Bridgewater Hospital for 6/25/87  
 06/15/1987 17 Habeas corpus for Deft at Dedham House of Correction for 6/25/87  
 06/25/1987 18 Report from Dr. Leonard Bard received dated 6/25/87  
 06/25/1987 60 day screening at Bridgewater Treatment Center - disposition on  
 06/25/1987 8/27/87 (Carey, J)  
 06/25/1987 19 Commitment to Bridgewater - Chapter 123A sec 4 & 6 (Carey, J)  
 06/25/1987 20 Habeas corpus for Deft at Bridgewater for 8/27/87  
 06/26/1987 Fee for Atty. Stephen Cunningham approved for \$3440.00 by Judge Carey  
 07/09/1987 21 Habeas corpus for Deft at Bridgewater for 8/27/87  
 08/13/1987 22 Report from Dr. Kreigman - copies sent to Atty. Cunningham and Asst.  
 08/13/1987 22 D.A. Hinkle and Judge Carey  
 08/21/1987 23 Report from Dr. Leavitt - copies sent to Atty. Cunningham, Asst. D.A.  
 08/21/1987 23 Hinkle and Judge Carey  
 08/27/1987 Re: Offense #1 - (84001) After hearing court finds defendant is a  
 08/27/1987 sexually dangerous person under Chapter 123A sec 5 - Findings to  
 08/27/1987 follow - Senence not less than 20 years - not more than 25 years at  
 08/27/1987 Massachusetts Correctional Institution at Cedar Junction, Walpole,  
 08/27/1987 committed - credit for time spent in jail awaiting disposition -  
 08/27/1987 notified of 10 days to appeal sentence to Appellate Division of  
 08/27/1987 SuperiorCourt - \$25.00 victim witness fee waived - 77 days credit

08/27/1987 (Carey, J) mittimus  
 08/27/1987 Re: Offense #2 - (84002) - After hearing - Sentence not less than 20  
 08/27/1987 years not more than 25 years Massachusetts Correctional Institution  
 08/27/1987 Cedar Junction from and after expiration of sentence awarded on 84001  
 08/27/1987 - execution suspended five year probation upon release from sentence  
 08/27/1987 on 84001 psychiatric counselling (Carey, J) mittimus  
 08/27/1987 Re: Offense # 4 (84004) After hearing - Sentence - not less than 20  
 08/27/1987 years not more than 25 years at Massachusetts Correctional  
 08/27/1987 Institution Cedar Junction - concurrent with 84002 - execution  
 08/27/1987 suspended - notified 10 days to appeal to the Appellate Division -  
 08/27/1987 jail credit 77 days (Carey, J) mittimus  
 08/27/1987 Re: Offenses # 5, 6 (84005, 84006) After hearing - Sentence not less  
 08/27/1987 than 10 years not more than 12 years at Massachusetts Correctional  
 08/27/1987 Institution at Cedar Junction - concurrent with 84001 - committed -  
 08/27/1987 notified 10 days to appeal to Appellate Division - 77 days credit  
 08/27/1987 (Carey, J) mittimus  
 08/27/1987 Re: Offenses # 7,9, 11, 12 (84007, 84009,84011,84012) After hearing -  
 08/27/1987 Sentence not less 6 years not more than 10 years at Massachusetts  
 08/27/1987 Correctional Institution at Cedar Junction committed - concurrent  
 08/27/1987 with 84002 - execution suspended 5 years probation notified 10 days  
 08/27/1987 to appeal - jail credit 77 days (Carey, J)  
 08/27/1987 24 Motion to stay execution of sentence pending appeal - denied -  
 08/27/1987 24 objection noted (Carey, J) notice sent  
 08/27/1987 25 Ex-parte Motion to continue sexually dangerous person hearing pending  
 08/27/1987 25 appeal denied - objection noted (Carey, J)  
 09/01/1987 26 NOTICE of APPEAL FILED  
 09/01/1987 27 Notice of appeal from sentence to Appellate Division  
 09/24/1987 28 Notice of service of notice of appeal  
 09/24/1987 29 Order issued for preparation of transcript  
 10/23/1987 30 MEMORANDUM re hearing under G.L. Chapter 123A on determination of  
 10/23/1987 30 sexually dangerous person - copies sent to District Attorney and  
 10/23/1987 30 Attorney (Carey, J)  
 10/26/1987 31 Motion by Deft: for revision or revocation of sentence, affidavit and  
 10/26/1987 31 certificate of service - copy sent to Judge Carey  
 11/16/1987 Transcript filed  
 12/07/1987 32 Notice of assembly of record; mailed to Appeals Court  
 02/16/1988 Re: motion to revise and revoke sentence - denied without further  
 02/16/1988 hearing after consideration of the report dated 2/3/88 and  
 02/16/1988 accompanying materials (Carey, J) notice sent 2/22/88  
 07/01/1988 33 Notice from Appellate Division dated 5/6/88 - ordered: that the  
 07/01/1988 33 judgments imposing said sentences stand and that said appeal be and  
 07/01/1988 33 is hereby dismissed.  
 10/17/1988 34 Motion by Deft: to stay proceedings



10/26/1988 35 Motion by Deft: for new trial  
 10/31/1988 36 Copy of plaintiff's letter withdrawing motion to vacate stay of  
 10/31/1988 36 appellate proceedings  
 11/08/1988 Re: Defendant's motion for new trial - this motion is denied without  
 11/08/1988 a hearing for the same reasons as set forth in the courts findings in  
 11/08/1988 the companion and consolidated case of comm. vs. Laura Tufts,  
 11/08/1988 which findings in said Tufts case are incorporated herein as being the  
 11/08/1988 same findings and reason for denying the within motion said motion  
 11/08/1988 raising no additional issues (Carey, J) notice sent  
 11/30/1988 37 Copy of findings made in companion case  
 11/30/1988 38 NOTICE of APPEAL FILED Re: denial of motion for new trial  
 12/12/1988 39 Notice of service of notice of appeal copy sent. The Hon. William H.  
 12/12/1988 39 Carey - Charles J. Hely, Asst. District Attorney  
 06/05/1991 41 Motion by Deft: for trial transcript  
 01/07/1992 42 Motion for release of all probation records  
 01/15/1996 43 Motion by Deft: for appointment of Committee for Public Counsel  
 01/15/1996 43 Services post conviction screening panel and affidavit  
 01/23/1996 Motion (P# 43) referred to Committee for Public Counsel Services for  
 01/23/1996 review as to appointment of counsel on post-conviction matters  
 01/23/1996 (Gershengorn, J) notice sent  
 01/23/1996 44 Committee for Public Counsel Services appointed (Gershengorn, J)  
 01/23/1996 44 notice sent  
 04/29/1997 45 Motion by Deft: for indigent court costs and affidavit  
 06/17/1998 46 Motion by Deft: to release portion of the probation report - Court  
 06/17/1998 46 orders Commonwealth to respond by 7/17/98 and all materials to be  
 06/17/1998 46 submitted to the First Session for decision (Dortch-Okara, J) notice  
 06/17/1998 46 sent  
 07/03/1998 47 Commonwealth files opposition to the defendant's motion to release a  
 07/03/1998 47 portion of the probation report - copy sent to Judge Dortch-Okara  
 07/03/1998 47 7/9/98  
 07/13/1998 48 Deft files response to Commonwealth's opposition - copy sent to  
 07/13/1998 48 Dortch-Okara 7/30/98  
 08/04/1998 Motion by Deft: to release portion of the probation report allowed  
 08/04/1998 (Dortch-Okara, J) notice sent  
 10/27/1998 49 Motion for the release of witness statements and affidavit  
 12/02/1998 50 ORDER: on defendant's motion to produce statements - ordered that the  
 12/02/1998 50 Commonwealth shall deliver to this court all such records along with  
 12/02/1998 50 a written statement (Volterra, J) notice sent to District Attorney,  
 12/02/1998 50 Attorney and Defendant  
 12/02/1998 50 Commonwealth files opposition to the defendant's motion to release  
 12/02/1998 50 witness statements in the possession of the District Attorney's Office  
 04/17/2001 51 Appearance of Deft's Atty: Deirdre Thurber  
 04/17/2001 52 Motion by Deft: for funds for an expert

04/17/2001 53 Motion by Deft: for post-conviction relief and exhibits  
 04/26/2001 Motion by Deft: for post-conviction relief - Comm to respond within  
 04/26/2001 30 days and all materials to be submitted to the First Session for  
 04/26/2001 further handling (Butler, J) notice sent 5/18/01,  
 05/29/2001 54 Motion by Commonwealth: for enlargement of time to file response to  
 05/29/2001 54 defendant's motion for post-conviction relief allowed to 7/20/01  
 05/29/2001 54 (Butler, J) notice sent 5/29/01  
 07/02/2001 55 Commonwealth files opposition to defendant's motion for  
 07/02/2001 55 post-conviction relief and certificate of service - copy sent to  
 07/02/2001 55 First Session Judge  
 08/06/2001 56 Deft files Rebuttal to the Commonwealth's opposition to defendant's  
 08/06/2001 56 motion for post-conviction relief  
 02/28/2003 57 MEMORANDUM & ORDER: on defendant's motion for post-conviction relief  
  
 02/28/2003 57 - denied (Agnes,J) notice sent  
 02/28/2003 58 Commonwealth files motion for reconsideration - copy sent to Asst.  
 02/28/2003 58 District Attorney  
 03/03/2003 59 Motion by Deft: for indigent court costs  
 03/03/2003 60 Deft files affidavit in support of motion for funds  
 03/04/2003 61 Deft files opposition to commonwealth's motion for reconsideration -  
 03/04/2003 61 Atty. Thurber sent copy to Judge Agnes  
 03/06/2003 Motion (P#58) - For the reasons set forth in the Commonwealth's  
 03/06/2003 motion expecially the impact of Comm. v. Randolph 435 Mass. 290. 296  
 03/06/2003 (2002) this motion is allowed and the defendant's motion for a new  
 03/06/2003 trial is denied. The defendant, view that ineffectiveness claim based  
 03/06/2003 in the failure to challenge the foundational basis for scientific  
 03/06/2003 evidence survives a determination the the admissibility of the  
 03/06/2003 evidence did not creae a substantial risk of a miscarriage of justice  
 03/06/2003 is incorrect, See Commonwealth vs. Azar, 435 Mass 675, 686 (2002)  
 03/06/2003 (Agnes,J) M Hickey, Asst. Clerk  
 03/06/2003 Motion (P# 59) - For the reasons set forth in the Court's revised  
 03/06/2003 memorandum of decision dated this day. Motion is denied (Agnes, J) M.  
 03/06/2003 Hickey, Asst. Clerk  
 03/10/2003 62 MEMORANDUM & ORDER: on defendant's motion for post-conviction relief  
  
 03/10/2003 62 - For the foregoing reasons, it is hereby ordered the defendant's  
 03/10/2003 62 motion for new trial is denied (Agnes, J) copy sent to Asst. District  
 03/10/2003 62 Attorney and Atty. Thurber  
 03/17/2003 63 NOTICE of APPEAL FILED - Re: denial of post conviction relief  
 03/18/2003 64 Notice of service of notice of appeal  
 04/16/2003 65 Notice of assembly of record; mailed to Appeals Court per Rule 9(d)  
 04/23/2003 66 Notice of Entry of appeal received from the Appeals Court #2003-P-0530  
 05/11/2004 67 Rescript received from Appeals Court; judgment AFFIRMED 3/10/03 -

05/11/2004 67 Order entered denying motion for new trial affirmed - By the court,  
05/11/2004 67 (Lenk, Gelinas & Trainor, JJ>), Ashley Ahearn, Clerk 4/12/04

-----

-----

-----

05/11/2004 67 Order entered denying motion for new trial affirmed - By the court,  
05/11/2004 67 (Lenk, Gelinas & Trainor, JJ>), Ashley Ahearn, Clerk 4/12/04

---

Charges

---

14 Charges for Docket: NOCR1986-84001

No. Charge Description: Indictment: Status:

1	RAPE OF CHILD WITH FORCE c265 s22A	Guilty verdict
2	ASSAULT TO RAPE CHILD c265 s24B	Guilty verdict
3	CHILD IN NUDE, LASCIVIOUS POSE/EXHIBIT c272 s29A(a)	Guilty verdict
4	INDECENT A&B ON CHILD UNDER 14 c265 s13B	Guilty verdict
5	CHILD IN NUDE, LASCIVIOUS POSE/EXHIBIT c272 s29A(a)	Guilty verdict
6	INDECENT A&B ON CHILD UNDER 14 c265 s13B	Guilty verdict
7	A&B c265 s13A(a)	Not guilty verdict
	INDECENT A&B ON CHILD UNDER 14 c265 s13B	Guilty verdict
	RAPE OF CHILD, STATUTORY c265 s23	Guilty verdict
0	INDECENT A&B ON CHILD UNDER 14 c265 s13B	Not guilty finding
11	A&B c265 s13A(a)	Not guilty verdict
12	RAPE OF CHILD, STATUTORY c265 s23	Not guilty finding
13	INDECENT A&B ON CHILD UNDER 14 c265 s13B	Not guilty finding
14	RAPE OF CHILD, STATUTORY c265 s23	Guilty verdict

---

© Copyright, Massachusetts Administrative Office of the Trial Court, 2000 - 2001.